

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Civil Appeal 128 of 2011

ISMAIL ABDALLA MWIMALI APPELLANT

V E R S U S

REGINA OMUHALA NASIO RESPONDENT

R U L I N G

On 22/6/2010 the applicant appeared before the Mumias Principal Magistrate, E.K. Makori and decided to withdraw his suit number SRMCC 152 of 2003. He was made to pay costs to the defendant and the costs were later assessed at KShs.39,600/=.

The applicant was represented by counsel before the trial court but decided to withdraw the case on his own. He has now filed this application seeking stay of execution for the costs pending the hearing and determination of his appeal. Mr. Kasamani, counsel for the appellant submitted that counsel for the defendant took advantage of the applicant who is illiterate. The applicant withdrew the suit knowing that he was not going to pay costs and since he had an advocate on record, he could not have entered into such a consent.

Mr. Nandwa, counsel for the respondent's position is that the applicant withdrew the suit willingly. The withdrawal was made after seven (7) years and costs normally follow the event.

In order not to shut out the applicant from pursuing his appeal, I will order that the assessed costs be deposited in court within thirty (30) days hereof. This will cushion the respondent in the event that the appeal is dismissed. The applicant contends that the taxed costs are excessive. I believe this is a matter where parties could have settled amongst themselves.

In the end I do allow the application dated 18th November 2011 and stay the execution in Mumias SRMCC 153 of 2003. The applicant shall deposit the assessed costs of KShs.39,600/= in court within thirty (30) days hereof failing which the stay of execution to have lapsed.

Delivered, dated and signed at Kakamega this 26th day of March 2012

**SAID J. CHITEMBWE
J U D G E**