



## Civil Appeal 118 of 2012

### Editorial Summary

1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of Subordinate case:*

### TORT

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- 3.1 *Running down case*
- 3.2 *Pedestrian/motor vehicle accident*
- 3.3 *Sustained injuries*
- 3.4 *Defendant denies allegations*
- 3.5 *No longer owner of vehicle alleged  
sold the same.*
- 3.6 *Judgment entered exparte against him.  
Application to amend refused.*

3.7 *Prays for stay of execution.*

4. *Application 16<sup>th</sup> March 2012:*

4.1 *That there be stay of execution pending appeal.*

4.2 *Further affidavit filed.*

5. *Held:*

*Application for stya of execution granted.*

6. *Case Law:*

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7. *Advocates :*

i) *J L Kariuki holding brief for R M Mutiso instructed by M/s R M Mutis & Co Advocates for appellant/ original defendant.*

ii) *Mwaura Kamau & Co Advocates for respondent/ original plaintiff*

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Civil Appeal 118 of 2012**

**JAMES NGUGI MWANGI ..... APPELLANT/ORIGINAL DEFENDANT**

**VERSUS**

**PETER NGOCHI NDWIGA..... RESPONDENT/ORIGINAL PLAINTIFF**

*(Being an appeal arising from the Ruling of Hon. S. Okato (Senior Principal Magistrate) in Case No. 13161 of 2006 dated 20<sup>th</sup> February 2012 at Nairobi)*

**RULING NO. 2**

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**I. INTRODUCTION**

1. This court permitted the applicant to file further affidavit to provide this court with further information on this application.
2. It is hereby been produced. That the applicant had in fact had judgment entered exparte against him. He then applied to have the judgment reviewed. This was in fact refused. The applicant filed application seeking stay of execution.
3. The defence was in fact that the defendant was never the owner of the vehicle. The said defendant has probable success, if the appeal is successful.
4. The applicant prays that stay of execution be given.

**II FINDINGS**

5. The application for stay of execution be and is hereby granted.
6. That the orders be served upon the respondent.
7. The costs in the appeal.

**DATED THIS 26<sup>TH</sup> DAY OF MARCH 2012 AT NAIROBI**

M.A. ANG'AWA

JUDGE

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ii) *Mwaura Kamau & Co Advocates for respondent/  
original plaintiff*