



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KAKAMEGA**

**Civil Appeal 65 of 2006**

**LOICE ONDISA OMOLO ..... APPELLANT**

**V E R S U S**

**HASSAN CHITECHI MUKHOLI ..... RESPONDENT**

**R U L I N G**

In her chamber summons dated 1<sup>st</sup> May 2010. The applicant is seeking an order of stay of execution pending the hearing and determination of her appeal. Judgment was entered against the applicant on 7<sup>th</sup> July 2006 for KShs.175,000/= together with interest and costs.

Parties filed written submissions in support and against the application. The appellant's submission is that there was a breakdown of communication between herself and her former Advocate, Munyendo Muleshe & Co. Advocates and that she was made to sign a consent which she did not understand. The appellant has shown commitment and has paid KShs.50,000/=.

On his part, the respondent contends that the applicant was committed to civil jail and signed a consent whereby the decretal sum was to be paid by installment. However, upon release from prison, the appellant failed to pay the installments and only paid KShs.50,000/=.

The pleadings show that a consent was filed on 6<sup>th</sup> April 2010 before the Mumias Court in Mumias SRMCC 447 of 2004. The said consent shows that the decretal sum was to be paid by way of installments that are staggered. The appellant thumb-printed the consent. It is further established that since April 2010 no other amount has been paid. The appeal was filed on 2<sup>nd</sup> August 2006 and no action has been taken since then.

Whereas it is the appellant's right to pursue her appeal, it is equally the right of the respondent to enjoy the fruits of his judgment. I do not wish to lock out the appellant from pursuing her appeal. However, the sum of KShs.50,000/= deposited cannot be held to be enough security. For purposes of safeguarding the interest of both parties I do allow the application for stay of execution dated 10<sup>th</sup> May 2010 subject to the following conditions.

***(i) The appellant to deposit in court a sum of KShs.200,000/= within sixty (60) days hereof.***

***(ii) A caveat to be registered against plot number South Wanga/Ekero/812 pending the hearing and determination of the appeal.***

***(iii) The appellant to list her appeal for directions within sixty (60) days hereof and a record of appeal to be filed and served before then.***

It is further ordered that should the appellant fail to pay the sum of KShs.200,000/= as ordered herein then

the order of stay shall be deemed to have lapsed and execution shall take effect. Each party shall meet his/her own costs.

**Delivered and dated at Kakamega this 26<sup>th</sup> day of March 2012**

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