



Editorial Summary

1. *Civil Appeal*

2. *Civil Practice and Procedure*

3. *Subject of Tribunal case*

3.1 *Sale of motor vehicle by way of auction.*

3.2 *Fraud*

3.3 *Summary judgment*

3.4 *Related cases*

*CA 1034/07
SPMCC 1885/04*

4. *Application for stay of execution*

Notice of Motion 18th January 2012

5. *Issue of representation.*

Application filed by E.K. Mutua – not on record.

6. *Objection by the respondent*

In the alternative, no stay of execution be granted.

7. *Held:*

i) *Application defective and is struck out.*

8. *Case Law:*

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9. *Advocates :*

i) *G.K. Wandati holding brief for Owino instructed by M/s E.K. Mutua & Co Advocates for appellant*

ii) *C.M. Ngugi instructed by C.M. Ngugi & Co Advocates for respondent*

REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Civil Appeal 531 of 2011

PETER MWANGI GATHOGO T/A

DAYSTAR AUCTIONEERS APPELLANT/ORIGINAL DEFENDANT

VERSUS

ROBERT MWANGI KAMAU RESPONDENT/ORIGINAL PLAINTIFF

(Being an appeal arising from the judgment of Hon. P. Onyango – Chief Magistrate in Case No. 4172 of 2010 dated 21st September 2011

at Milimani Commercial Courts)

RULING

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Application for Stay of Execution

Notice of Motion 18th January 2012

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I. BACKGROUND

1. The matter herein arises from an auction of a lorry and touched upon a series of other suits and appeal.
2. SPMCC 1885/04
HCCA 1034/07
CMCC 4172/10
HCCA 531/11
3. The appellant/applicant seeks orders of stay of execution to the ruling of the Hon. Magistrate delivered on 21st September 2011 whereby an application for summary judgment against his defence was entered and struck out.
4. That his defence had no triable issues.
5. The applicant filed appeal on 19th October 2011 and sought the order of stay of execution pending the hearing of the appeal.
6. The application was opposed on grounds that the advocate who drew up the application was different from the advocate for the applicant who was never on record.
7. That the application be struck out. If per chance the application is not struck out, then the court should find there is no basis to the application.
8. The application indeed is citing an advocate firm from the one who filed the application. The application be and is hereby struck out.
9. Leave be and is hereby granted to file a correct application.

10. There will be costs to the respondent.

DATED THIS 23RD DAY OF MARCH 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

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Advocates :

i) *G.K. Wandati holding brief for Owino instructed by M/s E.K. Mutua & Co Advocates
for appellant*

ii) *C.M. Ngugi instructed by C.M. Ngugi & Co Advocates for respondent*