



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISCELLANEOUS CIVIL APPLICATION 65 OF 2011**

**MUMIAS SUGAR CO. LTD. .... 1ST APPLICANT**

**ISAAC SHEUNDA ..... 2ND APPLICANT**

**V E R S U S**

**ALOISE MUTSAYI WALUNYA t/a ISONGO**

**JAGGERY FACTORY .....1ST RESPONDENT**

**THE HONOURABLE THE ATTORNEY GENERAL ..... 2ND RESPONDENT**

**AIP CHARLES OUMA ..... 3RD RESPONDENT**

**AIP JAMES WEKESA .....4TH RESPONDENT**

**CPL. SABASTIAN MANYONYI ..... 5TH RESPONDENT**

**PC THOMAS LIMO ..... 6TH RESPONDENT**

**JACKSON WANYAMA ..... 7TH RESPONDENT**

**DANIEL MARTIN ..... 8TH RESPONDENT**

**RULING**

The application dated 26.10.11 seeks the following orders:-

“a) That this Honourable court be pleased to grant temporary stay of execution of the court decree and judgment in Kakamega CMCC No. 422 of 2006 pending the hearing and determination of this application inter-partes.

b) That the Honourable court be pleased to grant stay of execution of the court’s decree and Judgment in Kakamega CMCC 422 of 2006 pending the hearing and final determination of he intended Appeal.

c) That Applicant be granted leave to file this appeal out of time.

d) That costs and incidentals to this application to abide by the result of the intended appeal.”

The application is supported by the annexed affidavit of EMILY K. OTIENO sworn on 26.10.11.

The application is opposed to as per the grounds of opposition dated 2.11.11.

The memorandum of appeal filed herein refers to Kakamega CMCC 422 of 2006. The proceedings of the lower court have not been annexed. It is therefore not clear whether the difference in the case numbers cited is a typographical error or whether the same parties have two suits.

Order 22 rule 25 of the Civil Procedure rules provides for stay of execution pending suit between the Decree Holder and the Judgment Debtor. With the application herein referring to a different case number from the one appealed from, I hold that the application is incompetent.

Consequently, the application is struck out with costs to the Respondent.

*Delivered, dated and signed at Kakamega this 15<sup>th</sup> day of March, 2012*

**B. THURANIRA JADEN**  
**J U D G E**