



*REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI  
MILIMANI LAW COURTS  
CIVIL APPEAL NO. 675 OF 2011*

**AMOS MWANIKI..... 1<sup>ST</sup> APPLICANT**

**MICROFILM EQUIPMENT LTD. .... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**SENATOR CARDS LIMITED..... RESPONDENT**

**R U L I N G**

**Application for stay of ruling**

**Pending hearing of appeal on 23<sup>rd</sup> December, 2011**

**I. BACKGROUND**

1. The original plaintiff /respondent, M/s Senator Cards Ltd, had sued the appellants for nonpayment of a charge card, issued to them by way of a contract between the parties. This agreement was entered into on the 22<sup>nd</sup> August, 1995.

By 31<sup>st</sup> August, 1998 the Applicant failed to pay the said sums that amounted to Ksh.900, 541/30.

2. The Applicants changed advocates. An attempt to enter summary judgment to the defence was made. This was set aside by the High Court (Khamoni J.)

3. The hearing of the suit proceeded ex parte and a judgment, dated 14<sup>th</sup> March 2001, entered in favour of the respondent was made.

4. The applicant applied for its setting aside. By a ruling dated 1<sup>st</sup> December, 2011, the Principal Magistrate allowed the application to set aside the judgment, BUT made condition that the decretal sum of Ksh.2, 308,165/30 be deposited to court.

5. The applicant filed appeal on 23<sup>rd</sup> December, 2011 and by application of 23<sup>rd</sup> December, 2011 prayed that there be a stay of execution of those orders.

**II. APPLICATION 23<sup>RD</sup> DECEMBER 2011**

6. The arguments put forward was that the sum of Ksh.2, 308,165/32 was beyond the pecuniary jurisdiction of the said Hon. Magistrate.

7. The request to deposit this sum to court should not be made.
8. In reply the respondent stated that they were in order to have served the advocates formerly on record, due to non-compliance of the Order 9 and 6 Civil Procedure Rules.
9. That the trial magistrate was correct in giving orders that the decretal sum to be deposited to court.

### **III. OPINION**

10. An application to set aside the judgment of the court awarding the respondent Ksh.2, 308,265.30 was successfully applied for before the Hon. trial magistrate. The effect of setting aside a judgment means that there is no decree on record. It is, therefore, irregular to ask the applicant to deposit the whole decretal sum to court when in fact there is no decree.

11. I would agree with the applicant, that the ruling by the Hon. Magistrate requiring the deposit of the decretal sum to court, after judgment has set aside, be herein stayed pending the hearing of the main appeal.

12. There will be costs to the applicant.

**Dated this 7<sup>th</sup> day of March 2012 at Nairobi.**

**M. ANG'AWA  
JUDGE**

*Advocates:*

i) *R.B. Webale instructed by Wambua Njuguna & Kiriba  
& Co Advocates for appellant*

ii) *B. Chege instructed by Muriu Mungai & Co Advocates for  
respondent*