



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 556 of 2010

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate court case*

CONTRACT

- 3.1 *Legal fees due and owing to advocates/original plaintiff for 1 million out of 5 million.*
- 3.2 *Defence – denied allegations*
- 3.3 *Notice of Motion 14th September 2010 seeking summary judgment.*
- 3.4 *Application to cross examine deponents.*
- 3.5 *Ruling by Hon. Magistrate that cross examination is not limited “sky is the limit.” Summary judgment is granted.*
- 3.6 *Original defendants/respondent files appeal to High Court on 10th December 2010.*
- 3.7 *Application for stay of execution granted Khaminwa J on 14th March 2012.*
- 3.8 *Condition: That full decretal sum deposited in an*

interest earning account in joint names of advocate.

3.9 *Advocate opens account but only ½ of decretal sum is deposited.*

3.10 *Application 8th June 2012 to left the stay orders and allow execution to proceed.*

4. *Application 8th June 2012*

4.1 *Stay of execution be lifted.*

4.2 *In reply respondent states the money has now been disputed.*

4.3 *Parties confirm from bank that funds paid in on 15th June 2012.*

5. *Held:*

i) *Sum now deposit albeit out of time.*

ii) *Costs be awarded as remedy, to the applicant throw away Ksh. 5000/-*

iii) *Stay orders to remain.*

6. *Case Law:*

7. *Advocates :*

i) *M/s B.M. Musyoki instructed by B.M. Musyoki & Co Advocates for appellant/original defendant*

ii) *M/s F.G. Thuita instructed by Murage, Mwangi & Co Advocates for respondent/original plaintiff*

KIOKO MANGELI

KIMANI CHEGE APPELLANTS/ ORIGINAL DEFENDANTS

VERSUS

**MURAGE & MWANGI ADVOCATES RESPONDENT/ ORIGINAL
PLAINTIFF**

*(Being an appeal from the Ruling of S.Okato Esq – Principal Magistrate in Civil Case No. 4766 of 2009
delivered on 25th November 2009 at*

Milimani Commercial Court)

RULING

Application to lift orders of stay of execution

Dated 8th June 2012

I. INTRODUCTION

1. The appellants were sued as defendants in the subordinate court of Kenya at Nairobi by their former advocate for services rendered but not paid for. The advocates had done some work and were due for fees of Ksh. 5 million. There was payment of Ksh. 4 million but a balance of Ksh. 1 million still remained.
2. When the appellants filed defense, the respondent/original plaintiff applied for summary judgment. In the middle of hearing this application, there was indication that the defendants be cross examined. The rules of cross examination was in issue. The trial magistrate held that cross examination of a deponent is not limited – in fact that “sky is the limit” (25th November 2010) summary judgment was duly entered.
3. Being aggrieved, the original defendants appealed to the High Court on 10th December 2010.
4. An application for stay was applied for. Khaminwa J upon hearing the matter granted the application on 14th March 2012. She gave condition that the full decretal sum be deposited in an interest earning account in the joint names of the advocate.
5. The advocates opened an account but only half the sum was deposited. By an application of 8th June 2012 the respondent prayed that the orders of stay of execution be lifted as the 30 days have lapsed but only ½ of the deposit was put in the account.
6. The appellant/respondent argued the funds were in the account. The parties were given an opportunity to go to the bank, which they duly did, to confirm the sum in the account.
7. Upon returning to court, the sum was confirmed to have been deposited in full albeit out of time and on 15th June 2012.
8. The applicant left the matter to court.

II FINDINGS

9. The orders of the court was partially fulfilled by the respondent. There should have been taken liberty to apply by them, to extend the 30 days period on grounds that one of the appellant/respondent was out of the country or was not able to attend court.

10. Nonetheless the funds have now been deposited. This court would hold that the stay proceedings be maintained. But as the delay in depositing the sum was occasioned and so done without leave of the court, it is hereby ordered that there be throw away costs to the applicant of Ksh. 5,000/-. The costs of this application shall also be had.

DATED THIS 27TH DAY OF JUNE 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates:

i) *M/s B.M. Musyoki instructed by B.M. Musyoki & Co Advocates for
appellant/original defendant*

ii) *M/s F.G. Thuita instructed by Murage, Mwangi & Co Advocates
for respondent/original plaintiff*