



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Civil Appeal 33 of 2011

WEST KENYA SUGAR CO.

LTD.....APPELLANT

VERSUS

LEONARD MUYUKA

SHIMWENYI.....RESPONDENT

R U L I N G

The application by way of Notice of Motion dated 8th November, 2011 seeks the following orders:-

1. That the stay Orders granted on 22/6/2011 of temporary stay granted be lifted due to the defendant's disobedience and contempt of the orders of 4th July, 201.
2. That the monies deposited in court as per the order of 22nd June, 2011 be released to the respondent's advocates forthwith.
3. That the appeal be dismissed with costs.
4. That costs of the application be provided for.

The application is supported by the affidavit of **Leonard Shinwenyi** sworn on 8th November 2011. The applicant's case is that he obtained judgment in Kakamega CMCC No. 158/2007 on the 4th day of March 2011. The appellant appealed against the said judgment and obtained orders of stay of execution on 24.5.11. That the said orders lapsed but on 22.6.11 the appellant obtained stay orders upon the deposit of Kshs.250,000/= as security.

Thereafter on 4th July, 2011 the court gave orders admitting the appeal to hearing. The record of Appeal was to be filed and served within 14 days and hearing of the appeal set down for hearing on 27.10.11. That on 27.10.11 the appellant did not attend court to prosecute the appeal. The applicant saw the appellant's non attendance as a demonstration of lack of interest in the appeal. The applicant applied for the dismissal of the appeal with costs and that the orders of stay be lifted and the Kshs.280,000/= deposited be released to the applicant.

The appellant though duly served did not attend court on 20.2.12 when the application proceeded to hearing. The application proceeded *ex parte*. No papers were filed by the appellants in opposition to the

application.

The history of this appeal reflects lack of diligence on the respondent's part. The respondent was granted a temporary stay on 24.5.2011 and the application for stay fixed for hearing *inter-partes* on 13.6.2011. It seems that nothing transpired on 13.6.2011. On 15.6.2011 the application was fixed for hearing on 27.6.11. On 22.6.11 at the instance of the applicant, the stay orders were once again issued by the court on condition that the respondent deposited a sum of Kshs.250,000/= in court. Thereafter on 4.7.11 the appeal was fixed for hearing on 27.10.11. No record of appeal was filed and served and the appellant did not attend court. It appears that the appellant has no interest in pursuing the appeal. The appellant should therefore not be allowed to continue enjoying the stay orders.

The application has merits and is allowed with costs.

Delivered, dated and signed at Kakamega this 12th day of June., 2012.

B. THURANIRA JADEN
J U D G E