

REPUBLIC OF KENYA

High Court at Kisumu

Civil Appeal 33 of 2012

ANTONINA OUMA OCHINO.....APPELLANT

VERSUS

WILLIS OGOLA OKENDO.....RESPONDENT

RULING

The application dated 20-3-2012 seeks that this court vacate the orders issued by the **Bondo SRMCC No. 14 of 2008** as well as stay of execution pending the hearing and the determination of the appeal herein.

The affidavit of **Antonina Ouma Ochino** sworn on 20-3-2012 confirms that the ex -parte judgment entered against her on 24-6-2011 was set aside conditionally. The condition which are contained in the replying affidavit of the respondent sworn on 23-4-2012 are that:-

- (a) The first defendant to deposit the decretal sum in court within 7 days from the date of this ruling.**
- (b) The 1st defendant to pay the costs of this application and throw away costs all assessed at Kshs 20,000/= within seven days from the date of this ruling.**
- (c) Failure to comply with any of the above conditions, the application to stand dismissed with costs and execution to issue.**

The applicant did not fulfill the said conditions. She however sought to review the ruling of the court and although there is no evidence of such her affidavit states as much.

Is the application meritorious at all? I do not find any merit at all. The lifeline handed over to the applicant was not met. This court acknowledges the sentiments of the respondent who apparently acts in person.

The conditions imposed by the lower court were reasonable. Beside this the applicant has not demonstrated that the respondent, in the event that her appeal succeeds cannot pay the amount in issue. The applicant in my opinion has been trying to bid time as evidence by the application at the lower court and now before this court.

Let the respondent enjoy the fruits of his judgment. The application is otherwise dismissed with costs to the respondent.

Dated, signed and delivered at Kisumu this 22nd day of October 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

In person for the applicant

Onyango for the respondent