



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO.478 OF 2010**

**KENYA POWER & LIGHTING CO. LTD.....APPELLANT**

**VERSUS**

**FRANCIS MBOGO MBURU.....RESPONDENT**

*(Being an appeal from the Ruling of the Principle Magistrate Hon. S. A. Okato, the Principle Magistrate at Milimani Commercial Courts*

*dated 28<sup>th</sup> October 2010 in CMCC No.6445 of 2010)*

**RULING**

**(Stay of execution of orders of court Notice of Motion 9 November 2010)**

**I. INTRODUCTION**

1. M/S Kenya Power and Lighting Co. Ltd, the applicant/ appellant/Original Defendant herein, were sued in the subordinate courts for wrongful detention of a motor vehicle registration KAT 158A Toyota Corolla Station Wagon.
2. This motor vehicle is alleged to be owed by Francis Mbogo Mburu, the Respondent/Original Plaintiff herein.
3. When the matter came before the Hon. Magistrate, it is alleged that the applicant were not properly on record. The matter was heard exparte and orders made that the said motor vehicle be released.
4. The applicant/appellant file appeal to this High Court on 9 November 2010. They filed an application for stay of execution of the orders of the trial magistrate dated the 28 October 2010 pending the hearing of the appeal. All they sought in their appeal is to either be allowed to be heard in an interparte hearing or to dismiss the respondent's application dated 13 October 2010.

5. As to the orders to have the motor vehicle released they opposed this as the vehicle was under criminal investigations.

6. The Respondent had argued that the applicant/appellant failed to offer any security.

### **III. OPINION**

7. The Lower Court file is not before this court. I rely on the submissions made by the parties from the bar.

8. From the genesis of this matter, the detention of the motor vehicle was so done under criminal circumstance. The respondent may be right in coming to court to exercise his Constitutional right and have his alleged property released to him. The issue before the subordinate court is whether the release of the motor vehicle be done before the investigation are complete.

9. The applicant alleges that they had not been heard. They appeal to this court, which is yet to be determined to be allowed to be heard interparte or alternative, the said orders be dismissed. Pending this hearing of the appeal, the orders of the trial magistrate dated 28<sup>th</sup> October 2010 should be stayed.

10. I would agree with that application. The reasons being that the matter has its genesis in Criminal Law and not in Civil Law. The issue therefore of security would not normally arise.

11. The application for stay of execution of the trial court's orders of 28 October 2010 pending appeal be and is hereby allowed. There be costs to the applicant.

**RULING DATED THIS 18 DAY OF MAY 2011 AT NAIROBI**

**M. A. ANG'AWA**

**JUDGE**

*Advocates:*

i. *C. M. Kibathi instructed by M/s Wairagu & Wairagu & Co. Advocates for the*

*Appellant*

ii. *Z. M. Kimani instructed by M/s Kimani Kahete & Co. Advocates for the*

*Respondent*