



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CIVIL APPEAL CASE NO. 194 OF 2010**

**JULIUS MWANGI MACHARIA.....APPELLANT**

**VERSUS**

**FRANCIS NJUE KIMANGA.....RESPONDENT**

***(Being an appeal from the ruling of E. N. Gichangi, Resident Magistrate, in Nanyuki Senior Principal Magistrate's Civil Case NO. 4 of 2009 delivered on 21<sup>st</sup> October 2010)***

**JUDGMENT**

The Municipal Council of Nanyuki, the Appellant herein, is seeking for *interalia* an order for stay of execution pending appeal in the Motion dated 24<sup>th</sup> March 2011. The Motion is supported by two affidavits of Florence Mwangangi and Njue Kimanga who opposed the Motion by filing two affidavits.

It is the submission of the Appellant that it has an arguable appeal and that unless an order for stay is given, it would suffer substantial loss. The Appellant further averred that the Motion was timeously filed. The Respondent on his part is of the view that there was inordinate delay in filing the Motion. He is also of the opinion that the Appellant will not suffer any substantial loss in case the order for stay is denied. The Respondent stated that he is in a financial position to refund the decretal sum should the appeal succeed.

I have considered the rival submissions plus the material placed before this court. This dispute started when the respondent filed the Plaintiff dated 15<sup>th</sup> January 2009 before the Nanyuki Senior Principal Magistrate's Court claiming for judgment in the following terms:

- (a) An order of injunction to restrain the Defendant from demolishing premises standing on Plot No. 51 next to the old market.***
- (b) A declaration that the Plaintiff (respondent) is the owner of Plot No. 51 Nanyuki, old market.***
- (c) Costs.***

The suit was heard and determined on 17<sup>th</sup> June 2010 in which judgment was entered in favour of the Respondent as prayed in the Plaintiff. The Appellant was aggrieved hence this appeal.

The principles to be considered in an application for stay pending appeal are well settled. First, an applicant must show the substantial loss it would suffer if the order for stay is denied. Secondly, an applicant must show that the application for stay was filed without unreasonable delay. Let me start by

applying the last principle. The question is whether the current Motion was timeously filed. It is clear that on 17<sup>th</sup> June 2010 judgment was delivered. This Motion was filed on 24<sup>th</sup> March 2011 about 8 months down the line. In my view, a delay of 8 months is an inordinate delay. To make matters worse, the Appellant did not explain the reasons for the long delay neither did it bother to deny the allegation which was specifically deponed in paragraph 7 of the replying affidavit.

In the second principle, the appellant is enjoined to explain the substantial loss it would suffer if the order is denied. On the face of the Motion, the Appellant merely stated that it would suffer substantial loss. I expected the deponent of the supporting affidavits to explain in detail the substantial loss the applicant would suffer if the order for stay is refused. It is not alleged that if the respondent if paid the costs awarded he would be unable to repay if the appeal succeeds.

In sum, the Motion lacks merit. It is dismissed with costs.

***Dated and delivered at Nyeri this 21<sup>st</sup> day of October 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of the Respondent and in the absence of Mr. Bwonong'a for the Respondent and Mrs. Mwangangi for the Appellant.