



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL CASE NO. 18B OF 2009

PETER KIBE WANGAI.....APPELLANT/RESPONDENT

VERSUS

PAUL TEMU NDEREMO.....1ST DEFENDANT/APPLICANT

**CAMP GARBATULA CATHOLIC.....2ND
DEFENDANT/APPLICANT**

RULING

The subject matter of this ruling is the Motion dated 21st March 2011 in which **Paul Temo Nderemo** and **Camp Garbatulla Catholic**, the 1st and 2nd Respondents, applied for an order of stay of execution of the order for retrial issued on 17th September 2010 pending appeal. The Motion is supported by the affidavit of Phyllis Wanjiru Waruhiu, Advocate. **Peter Kibe Wangai**, opposed the Motion by filing the replying affidavit he swore on 18th April 2011.

It is important at this juncture to set out in brief the background of the current Motion. The Appellant herein was given an order extending time to file a compensatory suit out of time against the

Respondents. Pursuant to the aforesaid order, the Appellant filed Nyeri C.M.C.C. No. 481 of 2005. The suit was heard by L.W. Gitari, learned Senior Principal Magistrate. by her judgment delivered on 30th April, 2008, the learned Senior Principal Magistrate, dismissed the suit on the basis that the Appellant did not deserve to be given an extension of time to file the suit out of time. The Appellant was aggrieved hence he preferred this appeal. This Court heard the appeal and allowed the same on 17th September 2010. this Court set aside the order dismissing the suit and substituted it with an order directing the case to be re-heard afresh. The Respondents were aggrieved hence they filed a notice of appeal. The Respondents are now beseeching this Court to stay the execution of the order pending the hearing and determination of the intended appeal.

It is the submission of the Respondents that unless the order for stay is given, they stand to suffer substantial loss in that their appeal will be rendered useless. It would appear the Appellant does not deny that the intended appeal will be rendered useless if the order for stay is not given. The Appellant's main worry is the period the appeal may take to file and conclude the intended appeal.

On my part and after considering the rival submissions, plus the material placed before this Court, I am convinced that the Motion has merit. If the order for stay is not given, the suit will be re-heard afresh before the appeal is heard. This will render the intended appeal nugatory. On the basis of this ground, I allow the Motion in terms of prayers 3 and 4 with costs abiding the outcome of the intended appeal.

Orders in this file should apply to Nyeri H.C.C.C.A.

No. 19 of 2009 George Maina Wangai & Another =Vs= Paul Teremo Nderemo & Another.

Dated and delivered at Nyeri this 21st day of October 2011.

J. K. SERGON
JUDGE