



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 990 OF 2005

**JOHANA KAMAU GITHONGO.....APPELLANT/ORIGINAL
PLAINTIFF**

VERSUS

**DAVID WOKABI MUREITHI.....RESPONDENT/ORIGINAL
DEFENDANT**

*(Being an appeal against the ruling made by the Chief Magistrate, C. Meoli in CMCC No. 2857 of
1999*

Milimani Commercial Courts, Nairobi, dated 15th November 2005.)

RULING

Leave to pay Decretal Sum in Installments

I. BACKGROUND

1. The respondent was sued in the subordinate court case in contract for sale of a motor vehicle registration KXJ 834 by agreement entered on 14th November 1997 between himself and the appellant.
2. The subordinate court granted orders of specific performance. In its judgment it failed to grant further orders that included loss of use of the motor vehicle. The appellant filed a review to the trial magistrate's orders. This was dismissed.
3. The appellant appealed to the High Court. After hearing the appeal, the Hon. Judge varied the judgement and awarded Ksh. 450,000/= as loss of user and costs. (28th June 2010).

4. On 11th April 2011, the respondent filed an application for stay of execution and leave to pay Ksh. 35,000/= per month.

5. This application came for hearing before Mwera J under certificate of urgency. The prayers were granted *ex parte* and the said duty judge ordered that Ksh. 50,000/= be deposited to court. Dates be taken in the new term.

6. The appellant/respondent did not take dates in the new term. The appellant/respondent in the application took the dates of 26th September 2011, on 7th July 2011 in the registry. On 15th July 2011 he served the appellant/respondent with a hearing notice.

7. On the day called out for hearing, the applicant/respondent was absent. The respondent/appellant argued the application.

II APPLICATION 11TH APRIL 2011

8. The application was opposed on the grounds that a new advocate had come on record without leave of the court as required by law.

9. The appellant had failed to show the court of meeting criteria of providing security. The applicant respondent has financial resources.

III FINDINGS

10. I have perused this file, that was finalized by Okwengu J on the 28th June 2010 and note that there has been no new advocate who has come on record on behalf of the applicant/respondent.

11. It is further noted that the Ksh. 50,000/= ordered by Mwera J to be paid to court has never been paid.

12. The dates of this application had been set down for hearing by the other party. on failure by the applicant to do so.

13. In the interest of justice, the application dated 11th April 2011 is dismissed under Order 12 Civil Procedure Rules. Wherein, the respondent admits no claim of the application with costs to the respondent appellant.

Dated this 6th Day of October 2011 at Nairobi

M. A. ANG'AWA
JUDGE

Advocates :

iii) D.O. Okindo instructed by M/s Rumba Kinuthia & Co Advocates for the appellant/ original plaintiff

iv) *A.L. Karim holding brief for M/s Ramesh Patel & Co Advocates for the respondent/original defendant*