



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL APPEAL NO. 50 OF 2009

PETER KINYANJUI APPELLANT

VERSUS

VIRGINIA WAITHERA MWANGI RESPONDENT

(Being an appeal from the Judgment of B.A Owino (Mrs) Resident Magistrate in Thika Magistrate's Court on 26th January 2009 vide CMCCC No. 68 of 1993)

RULING

*Application to Release Security of Costs
Deposited in Court*

I. BACKGROUND

1. The applicant herein filed an appeal against the respondent, on being dissatisfied with the decision of the subordinate court case.
2. The subject of the dispute between the parties was moneys lent and not paid. Judgment was entered in favour of the respondent defendant, on counter claim against the plaintiff.
3. On appeal, the High Court on 21st April 2009 (Okwengu J) ordered that security of cost of Ksh. 20,000/= be deposited to court. The appellant complied.
4. On the appeal being heard and finalized by Sitati J on 17th February 2011, the Hon. Judge dismissed the appeal as having no merits. The counter claim was also dismissed with costs to the appellant. An order as to costs was otherwise to be borne by both parties.
5. The appellant applies to have the funds of security of costs released to him.
6. The application under Order 51 Civil Procedure Rules was read with Section 3A with 42 r 6 Civil Procedure Rules on the issue of costs is to be applied for in writing. This was done in notice of motion

19th September 2011.

7. The appellant notified court that there was no opposition by the respondents whose advocate was duly served.

8. This court hereby orders that there be the release of sums as ordered deposited by court of Ksh. 20,000/- to the applicant appellant.

9. No orders as to costs.

DATED THIS 3RD DAY OF OCTOBER 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

Advocates :

- i) *Peter Kinyanjui Appellant in person*
- ii) *Advocate for respondent absent*