



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 292 OF 2007 (O.S.)

**IN THE MATTER OF: AN APPLICATION FOR A VESTING ORDER FOR PLOT NO.
1109/VI/MN**

AND

IN THE MATTER OF: KITUI RMCC 171/1997 MBULI MUTONGOI

=VERSUS=

MATIKU KYENGO KAVINGO

BETWEEN

ROMAD ENTERPRISES LIMITED.....PLAINTIFF

=VERSUS=

MATIKU KYENGO KAVINGO through NZELI

MATIKU the legal representative.....DFENDANT

RULING

By this Notice of Motion dated 3rd June 2011 the Applicants seek a stay of execution of the judgement delivered by Hon. Justice **M.K. Ibrahim** on 20th May 2011. **MR. ODDIAGA** argued the application on behalf of the Applicant. The same was strenuously opposed by **Mr. Khatib** for the Respondent.

I have read the judgment of the Hon. Justice Ibrahim. I have also considered the submissions made by learned counsel. At this point it is not my duty to delve into the merits or otherwise of the intended appeal. Suffice to say I find that the Hon. Judge did render an elaborate and well-reasoned decision taking into account all pertinent points. I further note that costs were taxed by consent at Kshs.150,000/-. As Mr. Khatib has pointed out this sum is recoverable if the appeal is successful. The Applicant is not in possession of the suit premises and stands to suffer no prejudice if a stay is not granted. It is my considered opinion that a stay at this stage is not merited. The matter can be fully ventilated at the hearing of the appeal. I therefore decline to order a stay as prayed.

Dated and Delivered in Mombasa this 30th day of November 2011.

M. ODERO

JUDGE

In the presence of:

Mr. Khatib for Plaintiff

Ms. Njuguna holding brief for Mr. Oddiaga for Defendant