



Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate Court Case*

COMMERCIAL LAW

- 3.1 *Tyres stored with appellant by respondent.*
 - 3.2 *Loss of tyres.*
 - 3.3. *Respondent files suit.*
 - 3.4 *Respondent applies for summary judgment and is granted the same.*
 - 3.5 *Appellant appeals 22nd June 2011.*
 - 3.6 *Files application for stay of execution*
4. *Stay of Execution 2nd February 2012*
 - i) *Applicant aggrieved by ruling.*
 - ii) *Prays for stay of execution pending appeal.*

IN REPLY:

Respondent – if paid are able to repay the moneys.

5. *Held:*
Application granted.

6. *Case Law:*
7. *Advocates :*

i) *C A Nyaiitho instructed by M/s Archer & Wilcox & Co Advocates for appellant/defendant*

ii) *K.G. Gathu holding brief for N. Oyatta instructed by M/s Mucheru Oyatta & Co Advocates for appellant*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 278 OF 2011

**EXPRESS KENYA LTD APPELLANT ORIGINAL
DEFENDANT**

VERSUS

**AUTOEXPRESS LTD RESPONDENT ORIGINAL
PLAINTIFF**

RULING

I. INTRODUCTION

1. In this commercial law matter, the subordinate court heard an application for summary judgment brought by the original plaintiff respondent herein.
2. The said respondent had stored tyres with the appellant. There was evidence of loss of the said tyres. The respondent prayed he be paid for the loss.
3. The trial magistrate granted the application for summary judgment on 9th June 2011.
4. Being aggrieved the appellant appealed to this High Court on the 22nd June 2011.

II STAY OF EXECUTION

5. By an application on 2nd February 2012 the applicant prayed for stay of execution pending appeal. This is on the grounds that there may be substantial loss, if stay of execution is not granted.
6. The application was opposed on grounds that if the money is paid, the respondent is in a position to refund the same. The application ordered to be dismissed.
7. Whereas the operations of the appellant would be effected, if stay of execution is permitted to proceed, this would cause substantial loss to the said business. The items proclaimed being the business vehicles.
8. This court would grant a stay of execution but it is on condition that the sum of Ksh. 1,001,953/- be deposited in court as security pending appeal within 21 days.
9. The costs to be in the appeal.

DATED THIS 15TH DAY OF NOVEMBER 2011 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

i) *C A Nyaiho instructed by M/s Archer & Wilcox & Co Advocates for appellant/defendant*

ii) *K.G. Gathu holding brief for N. Oyatta instructed by M/s Mucheru Oyatta & Co Advocates for appellant*