



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**CIVIL APPEAL NO.146 OF 2009**

*(Appeal arising from original BGM CM. CC No.263 of 2009)*

**JAFRED MAKHAKHA WAFULA** ..... **APPELLANT/APPLICANT**

~VRS~

|                                        |                                  |
|----------------------------------------|----------------------------------|
| <b>WILBERFORCE WAFULA BARASA</b> ..... | <b>1<sup>ST</sup> RESPONDENT</b> |
| <b>SETH B. MASIDZA</b> .....           | <b>2<sup>ND</sup> RESPONDENT</b> |
| <b>FRANSISCO K. KISUYA</b> .....       | <b>3<sup>RD</sup> RESPONDENT</b> |
| <b>RODGERS KHAKINA MAYENDE</b> .....   | <b>4<sup>TH</sup> RESPONDENT</b> |
| <b>JACKLINE M. BARASA</b> .....        | <b>5<sup>TH</sup> RESPONDENT</b> |
| <b>CATHERINE N. MASIBO</b> .....       | <b>6<sup>TH</sup> RESPONDENT</b> |
| <b>NZOIA SUGAR CO. LTD.</b> .....      | <b>7<sup>TH</sup> RESPONDENT</b> |

**RULING**

The Applicant/Appellant in his application dated 11/02/2010 seeks for order for stay of execution of orders granted on 19/11/2009 in Bungoma CM CC No.263 of 2009 and all consequential orders. The application was heard by way of affidavits.

The Appellant herein sued the Respondents in CM CC No.263 of 2009 for an order restraining the Respondent from getting the sugarcane proceeds of the 7<sup>th</sup> Respondents. The case was dismissed with costs. The Appellant was dissatisfied with the judgment and appealed to this court.

The grounds supporting the application are that the appeal is arguable with overwhelming chances of success. Further that the Appellant having been aggrieved by the said judgment, has a right to be heard on appeal. The appeal may be rendered nugatory if the orders sought are not granted.

The application was opposed by the Respondent who depones that the suit was dismissed for lack of proof.

I have looked at the grounds relied on and the nature of the application. The magistrate's court only made an order to dismiss the Plaintiff's suit. There are no other orders which are in existence to be stayed from being executed. Once a suit is dismissed it ends there and there is nothing to be stayed in a subsequent application. This court has not been asked to grant an injunction to restrain the 7<sup>th</sup> Defendant from paying the sugarcane proceeds to the Respondents. I have also perused the proceedings of the lower court. The appeal may be arguable but I have my reservations on its so called overwhelming chances of success.

I find that this application lacks merit and I dismiss it with costs.

.....  
**F. N. MUCHEMI**  
**JUDGE**

Ruling dated and delivered on the 14<sup>th</sup> day of November 2011 in the presence of Advocates.

.....  
**JUDGE**