

**REPUBLIC OF KENYA
IN THE HIGH COURT
AT BUNGOMA
CIVIL APPEAL NO.62 OF 2008**

(Appeal arising from BGM CM CC NO.452/05)

ATANAS BARASA:..... APPELLANT
~VRS~
JESCA OLALA KANALI:..... 1ST RESPONDENT
MIWA HAULIERS :..... 2ND RESPONDENT

RULING

The Applicant/Appellant's application dated 11/03/2011 seeks for stay of execution pending hearing and determination of Nairobi Petition no.199 of 2010. The Applicant states in the supporting affidavit that he is threatened with execution which order is contrary to Nairobi High Court Petition No.199 of 2010 which is yet to be concluded. The Applicant was dissatisfied with the judgment of this court and intends to appeal. He argues that Blue Shield Insurance Company will not settle the costs until the pending petition is concluded.

The application was opposed on grounds that the order in the High Court Nairobi Petition has nothing to do with this case. Secondly, that the Applicant never applied for stay of costs since the judgment was delivered. He has only come to court after threats to execute were made.

I have perused the order dated 28/10/2010 issued by the petition court. It grants leave to the Petitioner Blue Shield Company to enjoin all parties who are maintaining proceedings against the Petitioner and its insured. A conservatory order restrains all the claimants and interested parties cited in the ancillary suits seeking to satisfy liabilities arising from claims named in the Petitioner. In the attached list of cases, this case before Bungoma HCCC No.62 of 2008 is among those referred to. It follows that if execution is allowed to proceed, the Nairobi High Court Petition may be rendered nugatory. It is regrettable that the annexures do not show whether the case has a hearing date or indicate its current status. However, the order of the High Court in the petition is recognizable by this court. It is expected that the petition will be finalized without much delay to enable the Respondent be paid his costs or execute against the Applicant.

For the above reasons, I allow the application as prayed. Costs in the cause.

F. N. MUCHEMI
JUDGE

Ruling dated and delivered in open court this 7th day of November 2011 in the presence of Mr. Onchiri.

JUDGE