



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET Civil Appeal 66 of 2008**

**SAMUEL NYABIBA NYAKERI APPLICANT
=VERSUS=
PETER OKIABERA OMWENGA RESPONDENT
RULING**

I. Background

1. The Applicant had filed a suit in the subordinate Courts seeking orders that he is the sole owner of a Commercial plot. The subordinate Court held against the Applicant. Orders of stay was not granted. The Applicant applied to the High Court the Application dated 20th November 2008 coming before Ibrahim J was dismissed on the 17th March 2009.
2. An application to reinstate the said application by way of Notice of Motion dated 23rd March 2009 was heard on 9th May 2009. The Ruling of the said application was reserved. The Hon. Judge was then transferred to Mombasa and went together with the said file.
3. In the meantime, the Respondent has been collecting the rental income from the disputed premises.
4. The Applicant then filed this present application under Certificate of Urgency having served the Advocate for the Respondent.
5. This Court directed that a hearing notice do issue for an interparties hearing. The Advocate for the Respondent failed to attend Court. I am reliably informed that he would not attend Court.

II. Application

6. The Applicant stated that he was not under the

impression that the delivery of his ruling would take long. This was unforeseeable. He therefore prays that this Court makes an order pending the delivery of the ruling for reinstatement of the stay of execution in this matter by the Hon. Judge being that the rental income of the disputed property be deposited in the joint account of the two Advocates.

III. Findings

7.

I believe this request is reasonable. That the said Advocate do accordingly open a joint account to deposit the rental income till the delivery of the ruling from the Hon. Judge be done.

8.

I accordingly grant the prayer of this file being reconstructed which orders had been given earlier on exparte and certified this matter urgent. I further grant the prayers of depositing the sum in an interest earning account of the two Advocates on this matter as prayed and till the finalization of the Ruling.

9.

I award costs to the Applicant.

Dated this 29th day of July 2010

M.A. ANG'AWA

JUDGE

Advocate:

- | | | |
|------|---|----------------------|
| (i) | J.O. Samba Advocate instructed by the firm of M/s Jeremiah Onger Samba & Co. Advocate | |
| | for the Applicant | - Present |
| (ii) | A. Momanyi Advocate instructed by the firm of M/s Anassi Momanyi & Co. Advocate for the | |
| | Respondent | - Absent – on strike |

ORDER:

A copy of this Ruling and this file be forwarded to the Principal Judge on the 15th August 2010 for further direction.

M.A. ANG'AWA

JUDGE