



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 650 of 2008**

**REV. SAMUEL M. NJOROGE**

**GEORGE K. MARENYE**

**KENNETH K. KENGETHE**

**(Registered as Trustees of Gospel**

**Communication Ministry).....APPELLANTS**

**VERSUS**

**SAMUEL NDUNGU (CHAIRMAN)**

**JOHN K. MBUGUA**

**PETER RIMUI NGUGI**

**PASTOR PAUL MUIGAI**

**SARAH NYAMBURA MACHARIA**

**(Operating as Trustees of Full Gospel**

**Communication Nazareth).....RESPONDENTS**

**R U L I N G**

1. The appellants herein were dissatisfied with the judgment delivered on 28<sup>th</sup> October, 2007 by a Resident Magistrate in Limuru Civil Case No.17 of 2007. By a memorandum of appeal filed on 26<sup>th</sup> November, 2008, the appellants seek to have the judgment set aside and substituted thereof with the decision of this court.
2. By a notice of motion dated 2<sup>nd</sup> March, the appellants have now come to this court seeking an order for stay of execution of the certificate of costs and any other subsequent execution awarded in SPMCC

No.17 of 2007 pending the hearing of their appeal.

3. The appellants maintain that the appeal has high chances of success and if the execution of costs is not stayed, the appeal shall be rendered nugatory. It is further maintained that the proclamation of goods done on the 1<sup>st</sup> appellant's goods is grossly inflated and therefore the 1<sup>st</sup> appellant stands to suffer great loss.

4. The respondents object to the application through a replying affidavit sworn by Evans Wachira. He depones that the execution levied is exclusively in respect of recovery of costs awarded in the lower court as assessed by the court. It is further deponed that the application has no merit and is merely intended to delay the respondents from enjoying the fruits of their litigation.

5. I have carefully considered this application, the affidavit in support and in reply as well as submissions of counsel. It is evident from the judgment of the lower court which was annexed to the supporting affidavit sworn by Rev. Samuel N. Njoroge that the trial magistrate dismissed the appellants' suit with costs to the respondents. The execution levied is therefore in respect of costs only. The amount is a mere sum of Kshs.44,425/=. The appellants have not satisfied this court that the respondents will be unable to refund this sum of money should the appellants succeed in their appeal. It is apparent that the mere execution in respect of the costs will not render the appellant's appeal nugatory. The appellants have therefore failed to establish that they are likely to suffer substantial loss if the order of stay of execution is not granted. In the circumstances, the appellants have failed to satisfy the major condition provided under Order XLI Rule 4(2) of the Civil Procedure Rules. Accordingly, the application is rejected.

Those shall be the orders of this court.

**Dated and delivered this 29<sup>th</sup> day of May, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Wanjohi for the appellant

Nyagah H/B for Wachira for the respondent