



**REPUBLIC OF KENYA**

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

**Civil Appeal 203 of 2003**

**TRANSCOM COOPERATIVE SAVINGS & CREDIT LTD.....APPELLANT**

**VERSUS**

**FRANCIS MBUGUA NDUWA.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. On 30<sup>th</sup> January, 2009, this court discharged an interim order of stay of execution, which was granted to the appellant on 30<sup>th</sup> June 2003, and extended indefinitely on 16<sup>th</sup> January, 2004. This was due to the appellant's failure to prosecute his substantive application for stay of execution dated 30<sup>th</sup> June, 2003. The appellant has now withdrawn the application dated 30<sup>th</sup> June, 2003 and filed another application dated 16<sup>th</sup> February, 2009 in which he seeks an order for stay of execution, pending the hearing and determination of his appeal.

2. The appellant also seeks directions of the court for the hearing of the appeal on priority basis. The appellant explains that he is under imminent threat of execution. The appellant fears that if the decretal sum is released to the respondent, the appellant will be unable to recover the decretal sum from the respondent since the pecuniary ability of the 1<sup>st</sup> respondent is not known. Pursuant to orders issued by Sitati J, the appellant deposited a sum of Kshs.237,000/= into court as security.

3. The application is opposed through a replying affidavit sworn by the 1<sup>st</sup> respondent. Counsel for the respondent has submitted that the application is an abuse of the court process as it is an attempt to review the orders issued on 30<sup>th</sup> January, 2009 without making an appropriate application for review. The court was urged to dismiss the application as the appellant has not exhibited any efforts in pursuing the proceedings.

4. I have considered the application, the affidavit filed in support and the submissions made by counsel. I note that no explanation has been given by the appellant for the delay in prosecuting the application for stay of execution which was filed on 30<sup>th</sup> June, 2003. Nor has the appellant explained why it took 5 years for it to lodge the record of appeal.

5. Although the appellant has now withdrawn the application dated 30<sup>th</sup> June, 2003, the current application dated 16<sup>th</sup> February, 2009 seeks essentially the same orders. The current application is in effect a clever attempt to circumvent the orders made by the court on 30<sup>th</sup> January, 2009, by reinstating

the order for stay of execution. That is an abuse of the process of the court. If the appellant had good reasons for having the order of stay of execution reinstated, he ought to have applied to this court for an order of review.

6. Further, the power to place an appeal before the court for admission under Section 79B of the Civil Procedure Act, or directions under Order 8B of the Civil Procedure Rules, is an administrative power reserved for the Registrar of the Court. The record shows that the appellant only filed his record of appeal on 30<sup>th</sup> October, 2008 which was more than 5 years after filing his appeal. Obviously, the Registrar of the Court could not place the appeal before a Judge for admission or directions without the necessary documents being availed to the court. Having displayed no urgency in availing the documents or having the appeal disposed off, the appellant cannot now usurp the powers of the Registrar or seek to be given priority treatment.

7. For these reasons, I find no merit in the application dated 16<sup>th</sup> February, 2009 and do therefore dismiss it with costs.

Those shall be the orders of this court.

**Dated and delivered this 14<sup>th</sup> day of May, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Advocate for the appellant absent

Mrs. Ochanda for the respondent present

Erick – Court clerk