



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(MILIMANI LAW COURTS)**  
**CIVIL APPEAL 253 OF 2002**

**STEPHEN KIIRU MUTUVA.....APPELLANT**

**VERSUS**

**JANE WAITHERA MUNGAI.....RESPONDENT**

**R U L I N G**

1. By a notice of motion dated 17<sup>th</sup> September, 2008, Stephen Kiiru Mutuva, the appellant herein seeks to have the sum of Kshs.65,000/=, deposited in court by the appellant on 7<sup>th</sup> December, 2007, released to the appellant. The appellant explains that he has fully complied with the judgment of the court subject of his appeal. He further contends that there being no monetary decree there is no justification for the security as the order for stay of execution has since expired.
2. Jane Waithera Mungai, the respondent herein, objects to the application through a replying affidavit sworn by her advocate Richard Ng'ang'a Kang'iro. The counsel explains that there is a decree for Kshs.70,715/= and a certificate for costs for Kshs.34,745/=.
3. I have considered the application. The order for deposit of Kshs.65,000/= was a condition for the granting of a temporary order of stay of execution pending the hearing of the application dated 20<sup>th</sup> November, 2007. Subsequently, that application was granted and an order issued on 20<sup>th</sup> February, 2008 for the warrants issued in Thika CMCC No.1086 of 2001 to be set aside. To date, that order has not been challenged. In the circumstances, there is no justification for the deposit of Kshs.65,000/= remaining in court. The appellant has talked about a decree for Kshs.70,715/= and 34,745/=. However, that is not the subject of this appeal nor was it the subject of the application resulting in the deposit of the sum of Kshs.65,000/=.
4. For the above reasons, I allow the application and order that the sum of Kshs.65,000/= be released to the appellant.

Those shall be the orders of this court.

**Dated and delivered this 13<sup>th</sup> day of May, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Gitonga H/B for Ngugi for the appellant

Advocate for the respondent absent

Erick – Court clerk