



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**CIVIL APPEAL 126 OF 2009**

**FEMO WORKS LTD.....APPELLANT**

**VERSUS**

**PAUL KARANJA MWANGI.....RESPONDENT**

**R U L I N G**

1. The applicant who is the appellant in this appeal, seeks an order for stay of execution on the judgment delivered in SPMCC No.131 of 2005. He contends that his appeal has high chances of success and that unless the order for stay of execution is granted, he will suffer substantial loss as the respondent is a man of straw who will not be able to repay the decretal sum currently standing at Kshs.635,965/=.
2. The application is supported by an affidavit sworn by Simon Ngeru a director of the company. He swears that the applicant is a small company and payment of the decretal sum would affect its cash flow. The applicant has offered a bank guarantee as security.
3. The respondent objects to the application maintaining that the appellant has not established that it will suffer substantial loss. The respondent contends that the accident subject of the suit occurred about 5 years ago and he should now be allowed to enjoy the fruits of his judgment. The respondent contends that the applicant had in fact issued a cheque in satisfaction of the decretal sum and that his application is an abuse of the court process.
4. I have carefully considered this application. The applicant's contention that the respondent is a man of straw and may not be able to repay the decretal sum if required to has not been rebutted. Indeed, the sum of Kshs.635,965/= is a colossal sum for an individual who does not appear to have any proper income. The possibility of the applicant suffering substantial loss if the respondent is unable to repay the decretal sum is therefore real. I find that it is in the interest of justice that I do issue an order for stay of execution pending appeal on the following conditions:
  - (i) The applicant shall deposit a sum of Kshs.635,965/= into an interest earning account with a reputable financial institution in the joint names of the parties' advocates within 21 days from the date hereof.
  - (ii) The applicant shall file and serve a record of appeal within 90 days from the date hereof.
  - (iii) The applicant shall take all necessary action to facilitate the speedy disposal of this appeal. In the event that the appeal is not disposed off within 12 months from the date hereof, the order for stay of execution pending appeal shall stand discharged unless otherwise extended by the court.
  - (iv) Costs of this application shall be costs in the appeal.

**Dated and delivered this 18<sup>th</sup> day of June, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Kabaiko H/B for Munene for the appellant/applicant

Advocate for the respondent absent