

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Appeal 161 of 2007

MCHENZALA SITA.....APPELLANT

VERSUS

IDHA MARIE.....

.....RESPONDENT

RULING

This Notice of Motion has been brought under Order XXI Rule 22, Order L Rule 1 and 2 of the Civil Procedure Rule and section 3A of the Civil Procedure Act for stay of execution of a decree given on 1st July 2007 and issued on 19th March 2009 in view of the ruling in HCCC No. 1345 of 2005 Nairobi. The application is supported by an affidavit sworn by the Respondent Idha Marie and is based on the main ground that the High Court in Misc. Civil Application No. 1345 of 2005 (OS) declared *inter alia* that no execution should be levied against the Insured of United Insurance Company now in liquidation.

On 20th May 2009, I dismissed the appellant's application for stay of execution which application had been lodged under Order XLI Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The basis of the present application is a decision made in proceedings which were commenced in Nairobi Misc. Civil Suit No. 1345 of 2005. The parties herein were not parties in that suit. No order was issued staying proceedings herein and even if such an order would have been issued, I would have doubts as to its efficacy. Besides, that decision was delivered on 18th December 2007 and was not brought to the attention of the court, when the respondent's previous application for stay of execution was canvassed. The applicant has not invoked this court's review jurisdiction. Having dismissed his first application for stay of execution it was not open to the applicant to move the court in the manner he has done. The order he seeks is not available to him under Order XXI Rule 22 and Section 3A of the Civil Procedure Act which have been invoked.

This application is an abuse of the process of the court. Accordingly it is dismissed with costs.

DATED AND DELIVERED AT MOMBASA THIS 30TH DAY OF JULY 2009.

F. AZANGALALA

JUDGE

Read in the presence of Mr. Kenzi for the Applicant and Mr. Gathuku for the Respondent.

F. AZANGALALA

JUDGE

30TH JULY 2009