



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

Civil Suit 709 of 2004

1. *Civil Practice and Procedure*

2. *Subject of main suit Land LR 209/9099*

(i) *Landlord/Tenant*

(ii) *Judgment in favour of the Defendant 1, 2 and 3*

(iii) *Consequences – Eviction of Plaintiffs No. 1 from the Suit Premises*

**3. *Application under Order IVXI Civil Procedure Rules orally for;
stay pending appeal.***

No security offered

4. *Application opposed by the Respondents*

(i) *Property empty plot of land. No significant development*

(ii) *Should vacate immediately.*

(iii) *Plaintiffs No. 2 – leaves it to court.*

5. *Held –*

(i) *That the stay pending appeal is declined.*

6. *Case law - Nil*

7. *Advocates*

J. Thongori advocate instructed by Judy Thongori & Co advocates for 1st Plaintiff

S. Gitonga instructed by M/s Githonga Mureithi & Co advocates for the 2nd Plaintiff

B. Kariuki advocate instructed by Beatrice Kariuki & Associates for the 1st Defendant

P.W. Waitere instructed by Kagethe Waitere & Co advocates for the 1st Defendant

L.M. Mbabu advocate instructed by L.M. Mbabu & associates for the 2nd and 3rd defendants

S.K.M. Wandaka advocates instructed by M/s Kinuthia Wandaka & Co. advocates for interested party No. 1

A.W. Wahome advocates instructed by M/s A.W. Wahome & Co advocates for interested party No. 2

SIFA INTERNATIONAL LIMITED.....1ST PLAINTIFF

KOINANGE INVESTMENT DEVELOPMENT

CO. LIMITED (COMPANY NO. 1).....2ND PLAINTIFF

VERSUS

KOINANGE INVESTMENT DEVELOPMENT

CO. LIMITED (COMPANY NO. 2).....1ST DEFENDANT

EDDAH WANJIRU MBIYU.....2ND DEFENDANT

KENNETH SIKINYI OMWOMA

T/A MUMBO AUCTION SERVICES.....3RD DEFENDANT

ESTATE OF THE LATE MBIYU KOINANGE.....INTERESTED PARTY

R U L I N G

Stay of Execution Pending Appeal

I. Background

1. The relationship of the parties is that of Landlord/Tenants. That the said parties were heard and this court entered judgment in favour of the Landlord whose main shareholders of the company is the estate of a deceased person.
2. The advocate for the tenant now applied to this court for stay of execution pending a formal application, pending an appeal to the Court of Appeal.
3. The application was opposed as being one that touches on the integrity and honesty of the tenant's director.

II. Application

4. The tenant company states, if ordered to be evicted now after judgment, there would be substantial loss incurred by the Applicant tenant. There are employees, contracts on a monthly basis and they have paid up to and including August 31st, 2009.
5. In reply the Defendant 1, 2 and 3 through their advocates pray it should not be granted. That the

tenant had offered no security.

6. Interested party stated, the credibility of the tenant company was wanting.

III. Opinion

7. Before execution is permitted to take place, parties must be subjected to taxation of their bill of cost, before the taxing master.

8. After the bill has been drawn and agreed upon, failure to, the taxing master determines and taxes the bill, the party whose judgment is in favour with, must give a ten days notice of intention of execution before proceeding into the execution process.

9. I have ruled that the tenant has not come to court with clean hands. I do not believe in this matter that a stay of execution ought to be granted.

10. The tenant owes a minimum of Kshs.2 million in rent not accounted for.

11. The orders of this court was judgment in favour of the Landlords of whom orders of vacant possession eviction has been lawfully pronounced.

12. The application for stay of execution is rejected and refused.

13. For ease of clarity, according to law no execution would generally take place until after the bill has been taxed and a notice of 10 days is given to the other party.

14. Costs to the Respondents.

Delivered and Dated this 17th day of August 2009 at Nairobi under the Vacation Rules, Judicature Act Cap 8 Rule 3.

M.A. ANG'AWA

JUDGE

17.8.09

Advocates

J. Thongori advocate instructed by Judy Thongori & Co advocates for 1st Plaintiff

S. Gitonga instructed by M/s Githonga Mureithi & Co advocates for the 2nd Plaintiff

L.M. Mbabu instructed by L.M. Mbabu & Associates for the 2nd and 3rd Defendants

B. Kariuki advocate of Beatrice Kariuki & Associates for the 1st Defendant and leading P. Waitere instructed by Kangethe & Co Advocates for 1st defendant.

Interested Party No. 1 – David Njuno Koinange represented by S.K. Wandaka instructed by Kinuthia M/s Kinuthia Wandaka & Co Advocates – absent brief held by B. Kariuki

(P & A) 527 Nairobi in the estate of the late Mbiyu Koinange

Interested Party No. 2 – Eddah Wanjiru represented by A.W. Wahome instructed by A.W. Wahome & Co Advocates

*(P & A) 527/81 Nairobi in the estate of the late Mbiyu **Koinange***

COURT:

Ruling delivered in open court under the vacation Rules, Judicature Act Cap 8; Rule 3.

M.A. ANG'AWA

JUDGE

17.8.09

ORDER:

Typed proceedings and judgment be availed to parties on payment of requisite fee.

That a photocopy/handwritten of the judgment and ruling be availed to parties on payment of requisite fees.

M.A. ANG'AWA

JUDGE