



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

**Civil Case 930 of 1985**

**BONIFACE K KAMAU ..... PLAINTIFF**

**VERSUS**

**JUSTUS MATHENGE NDUHIU. .... DEFENDANT**

**R U L I N G**

The application before the court is the Chamber Summons dated 16<sup>th</sup> July, 2008. It seeks the relief: -

**“That the Honourable court do grant a stay of execution of the judgment entered against the applicant/defendant and all consequential orders and/decree, pending the hearing and final determination of the prayer that the suit herein has been otherwise compromised by lawful agreement between the parties herein.”**

I have carefully studied the supporting documents and the record of this file. As the applicant himself depones in his supporting affidavit sworn by him on 16<sup>TH</sup> July, 2008, this court by an order made by Osiemo, J on 15<sup>th</sup> June, 2006, stayed execution of his judgment and decree delivered on 24<sup>th</sup> October, 2005 until the hearing and final determination of an appeal filed by the applicant. Perusal of the record does not show that the said stay order has ever been discharged. That means that the stay is still in place.

In the above circumstances this application for a similar stay cannot be anything else but incompetent for being *res judicata*.

On the other hand, even were this application to be valid, the applicant/judgment debtor is trying to drag into the case a new cause of action. The judgment debtor is trying to argue that the decree in favour of the Decree holder/Respondent in this application, should be considered compromised. In my view that cannot be so. That is because the suit subject to the result of the purported appeal, is a finalized or fully determined suit which has nothing to do with new evidence of a purported agreement of sale of the suit property. Such new evidence was not introduced during the hearing of the present suit. It can only therefore be brought into play on a possible new suit which presently does not exist. In my view and finding, the applicant/judgment debtor is deliberately trying to confuse the legal situation by introducing new evidence into an already determined suit. He cannot be allowed to do so.

The court is from the record aware that the decree-holder has filed an application dated 25<sup>th</sup> February, 2008 to set aside or discharge Osiemo, J’s stay orders. In my view, the application should be heard on merit on the date to be fixed by the parties or the court.

In the meantime, the Applicant/Judgment debtor’s application for stay, is hereby struck out and dismissed with costs to the decree holder. Orders accordingly.

Dated and delivered at Nairobi this 25<sup>th</sup> day of November, 2009.

.....

**D A ONYANCHA**

**JUDGE**