



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

**Civil Appeal 508 of 2009**

**FARMERS CHOICE COMPANY LTD..... APPELLANT**

**VERSUS**

**GIDEON NDINIKA GITAU..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 16<sup>th</sup> September, 2009, Farmers Choice Limited hereinafter referred to as the applicant, seeks an order of stay of execution of the judgment and decree, delivered in Milimani CMCC No.6442 of 2007, pending the hearing and determination of its appeal filed in this Court.
2. The Motion is based on grounds stated on the face of the application as follows:
  - (a) There is currently no stay of execution and therefore the 1<sup>st</sup> respondent may proceed to execute the decree at any time.
  - (b) Should the 1<sup>st</sup> respondent proceed to execute the decree the applicant's appeal shall be rendered nugatory.

(c) The 1<sup>st</sup> respondent in his evidence in chief admitted that he is a man of straw and therefore should the applicant's appeal succeed it may not recover the decretal amount.

(d) This application has been lodged without undue delay

(e) The applicant is ready to provide security as a condition for the stay.

(f) It is in the interests of justice that stay of execution be granted.

3. The application is also supported by an affidavit sworn by Stephen F. Strong who is the administration director of the applicant.

4. In response to the application, the 1<sup>st</sup> respondent, Gideon Ndinika Gitau has filed grounds of opposition in which he states as follows:

(i) That the application is fatally and incurably defective.

(ii) The said application is incompetent has no merits is an abuse of the Court process.

(iii) The application does not meet the criteria set for the grant of stay of execution as envisaged by Order XLI Rule 4 of the Civil Procedure Rules.

(iv) The 1<sup>st</sup> respondent has never indicated in Court or given evidence to the effect that he is a man of straw and therefore not in a position to refund the decretal amount should the appeal succeed.

5. Pursuant to orders issued by Waweru, J. on 16<sup>th</sup> September, 2009, the applicant has deposited a sum of Kshs.305,000/= into Court as security.

6. I have considered this application, the affidavit in support and the grounds of opposition. I am satisfied that the application having been brought just about 12 days after the judgment was delivered it was brought without undue delay. The applicant has also provided security by depositing the sum of Kshs.305,000/= into Court. In the circumstances it is fair and just that an order for stay of execution pending appeal, do issue on the following conditions:

(i) The sum of Kshs.305,000/= deposited in Court shall be deposited 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 appellant shall file and serve a record of appeal within 90 days from the date hereof.

(iii) The appellant 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 20<sup>th</sup> day of November, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Ms. Karanja for the appellant

Advocate for the respondent, absent

Eric, court clerk