



**REPUBLIC OF KENYA**

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

**Civil Appeal 481 of 2009**

**GABRIEL NGUNYANGI t/a**

**REVIVAL AGENCIES..... APPELLANT**

**VERSUS**

**WILLIAM MITI MICHUGU.....  
RESPONDENT**

**R U L I N G**

1. By a Notice of Motion dated 12<sup>th</sup> October, 2009 Gabriel Ngunyangi t/a Revival Agencies hereinafter referred to as the applicant, seeks an order of stay of execution of the ruling made in the Chief Magistrate's Court in Civil Case No. 150 of 2009, on the 21<sup>st</sup> August, 2009, pending the hearing and final determination of the appeal. The applicant maintains that he has an arguable appeal and that unless the orders sought are granted, he will suffer irreparable loss, as the respondent is going to levy execution against him.
2. Pursuant to orders which were issued on 13<sup>th</sup> October, 2009 and 22<sup>nd</sup> October, 2009, the applicant has deposited a sum of KShs.100,000/= into this Court. The applicant has also provided security in the form of a bank guarantee for Kshs.150,000/=.
3. The application is opposed on the grounds that the applicant has not shown the substantial loss that he will suffer. It is contended that the money subject of the decree can be refunded by the respondent.
4. I have considered the application which is before me. I do note that the application was brought about a month after the filing of memorandum of appeal. It is true that the decree is for a specified sum of money. The appellant has however deposited a sum of Kshs.100,000/= in cash and has also provided a bank guarantee for the balance. In the circumstances I think it is appropriate that an order for stay of execution do issue.
5. Accordingly, I grant the application and issue an order for stay of execution on the following terms:
  - (i) The sum of Kshs.100,000/= deposited in Court by the appellant shall be released to the parties' counsel to 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 provide a bank guarantee for a sum of Kshs.150,000/= to remain in force for

the next 12 months within 21 days from today;

(iii) The appellant shall file and serve a record of appeal within 90 days from the date hereof.

(iv) The appellant shall take all necessary action to facilitate the speedy disposal of this appeal. In the event that the appellant fails to comply with condition No. (ii) or (iii) above, or the appeal is not disposed of within 12 months from the date hereof, the order for stay of execution shall be discharged unless otherwise extended by the Court.

(v) Costs of this application shall be costs in the appeal.

**Dated and delivered this 12<sup>th</sup> day of November, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Ogessa for the appellant

Mugo for the respondent

Eric, court clerk