



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

Misc Appli 82 of 2006

PETER MURIITHI SAMUELAPPLICANT

VERSUS

FRANCIS MAINA MUCHIRI.....RESPONDENT

RULING

Application dated 4/5/2007 seeking to reinstate application dated 20/7/2006 which application was seeking to enlarge time within which to file an appeal arising out of a decision on review application. The application dated 20/7/2006 was dismissed for non appearance of counsel by this court on 16/1/2007.

I have examined the application with supporting affidavit and replying affidavit. The application is brought under the wrong provision O.XX1 rule 22 which deals with transferred decrees for execution. However it appears that the amount due is only 100,000/=. It is not clear why arrangements to liquidate the sum has not been made since 27/4/2004. The litigants are aware that the decretal sum increases rapidly by interest and other charges and it is not surprising the amount is now said to be 2,341,205/=. The Applicant has himself to blame. From what is disclosed in the supporting affidavit, the reason for non appearance is that the advocate appointed to stand for Applicant failed to attend on material day and that the amount involved is not small. (I have already pointed to this.)

Upon considering this matter notwithstanding it is brought under wrong provisions. I am inclined to exercise my discretion in favour of the Applicant. Rules of procedure are handmaidens of justice. I therefore allow stay and order the application dated 20/7/2006 to be reinstated on condition:-

1. that all thrown away costs including auctioneers charges shall be paid to respondent by the Applicant.
2. the sum of Shs.100,000/= shall be paid to decree holder.

Order 1 and 2 above to be complied with within the next 21 days from today. Also the application dated 20/7/2006 shall be fixed for hearing within the next 21 days.

It is so ordered.

Dated this 11th February of 2008.

J. N. KHAMINWA

JUDGE

11/2/2008

Khaminwa – Judge

Njue – Clerk

Read in open court in presence of Mr. Kathungu on 11/2/2008.

J. N. KHAMINWA

JUDGE