REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 356 of 2008

ACTION AID INTERNATIONAL KENYA……..……..1ST APPELLANT

OXFAM GB KENYA…….……...……2ND APPELLANT

WILLIAM MIGWI (Being sued as the

Commonwealth Education fund Coordinator..…..3RD APPELLANT

VERSUS

NDUNDA MUSAU……..……1ST RESPONDENT

PETER LEMMY MUNURI…….2ND RESPONDENT

MRS. CATHERINE M. KOLA……...3RD RESPONDENT

KENYA NATIONAL ASSOCIATION

OF PARENTS (KNAP)…….…….……4TH RESPONDENT

R U L I N G

By a notice of motion dated 13th July, 2008, the appellant/applicants seek an order for stay of execution of the ruling delivered by the Resident Magistrate Hon. Ireri on 17th June, 2008 in Milimani CMCC No.2391 of 2008, pending the hearing and determination of their appeal. It is the appellants' contention that unless the order for stay of execution is granted, they will suffer irreparable loss as they will be denied a chance of being heard on their defence, and their appeal will be rendered nugatory. The appellants also maintain that they will not be able to recover the decretal sum from the representatives of the 4th respondent, once the orders are executed and the respondents are paid.

The respondents opposed the application through a replying affidavit sworn by Ndunda Musau, the 1st respondent who is a director of 4th respondent. He deponed that the respondents have already incurred expenses and unless the appellants are compelled to pay the respondents will suffer prejudice. The respondents further contended that the appellants should be ordered to deposit the decretal sum into court.

I have considered the application, the affidavit in support and in reply and the annextures thereto. I am satisfied that it is fair and just to grant a conditional order of stay of execution. Accordingly I hereby order that a stay of execution of the ruling delivered by the Hon. Ireri on 17th June, 2008 in Milimani CMCC No.2391 of 2008 shall issue on condition that the sum of Kshs.300,735/= shall be deposited in court within 21 days from the date hereof. The deposited sum shall remain in court until the appeal is heard and disposed of. Costs of the application shall be in the appeal.

Those shall be the orders of this court.

Dated and delivered this 29th day of October, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Mwela H/B for Njoroge for the appellant

Advocate for the respondent absent