



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS**

Civil Appeal 222 of 2007

BINSAND AUTOPARTS & HAULIERS 1ST APPELLANT

DAVID MUTUA NDISII 2ND APPELLANT

VERSUS

MAKAU KAITHU MUSOMBA 1ST RESPONDENT

ZIPPORAH KOKI MUIVA (Suing as Next of kin and on

Behalf of the Estate of JOSEPH GAITHU MAKAU (DECEASED)... 2ND RESPONDENT

RULING

1. The Notice of Motion dated 14/12/2007 seeks orders that stay of execution be granted pending the hearing and determination of the Appeal herein. It is premised on Order XLI rule 4 (1) and (2).

2. Although grounds of opposition were filed on 17/12/2007, when the Application came for hearing on 10/7/2008, Mr L.M Wambua for the Respondent stated as follows:-

“Since the sum is substantial the whole sum should be placed in an interest earning account.”

3. In effect, I see no serious opposition to the Application and without belabouring the issue, I agree that the proper order to make is as follows:-

4. Let stay of execution be granted pending appeal on the condition that the entire decretal sum be deposited in an interest earning account in the names of the advocates for the parties within the next 45 days. Failure to do so, execution to issue.

5. Costs shall abide the Appeal.

6. Orders accordingly.

Dated and delivered at Machakos this 29th day of **October** 2008.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Wambua for Respondent**

N/A for Applicant

ISAAC LENAOLA

JUDGE