

iii. the Applicant is willing to deposit such security as the court may order.

5. In this case, I note that *Onyancha, J.* delivered his Ruling on 28.9.2006 and awarded costs to the ex-parte Applicant. The present Application was filed on 7.2.2007 only because of Notice to Show Cause had been issued on 24.1.2007. I have heard no complaint as to delay and so I take it that the issue is moot.

6. As to substantial loss the Applicant states in his Affidavit sworn on 1.3.2007 that the ex-parte Applicant is a peasant farmer and has no capacity to refund the costs should the Appeal succeed. I have weighed that issue and to my mind, there is real danger that the ex-parte Applicant may not have the means to refund the costs awarded to him. The Applicant has shown that he is willing to deposit such security as shall be ordered and in fairness to parties, that is the right way to deal with this matter.

7. In the event, I will grant the Application dated 6.2.2007 on condition that the entire decretal sum in costs is deposited in this court within 45 days failure to which execution may issue.

8. Costs shall abide the Appeal.

9. Orders accordingly.

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

Isaac Lenaola

Judge

In the presence of: Mr. Makau h/b for Mr Kisebu

Mr. Musyoka for Applicant h/b for Mr. Ngala for Respondent

Isaac Lenaola

Judge