



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1229 of 1993**

**WAMBUI NJENGA & 2 OTHERS.....PLAINTIFFS**

**VERSUS**

**MARY NDUTA MTUNGI & 5 OTHERS.....DEFENDANTS**

**R U L I N G**

This is the defendant's application brought under Order XLI Rule 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking a stay of execution of the judgment and decree of this court delivered on 29<sup>th</sup> September 2006.

The facts are few and simple. The plaintiff's claim a declaration that the defendant was registered as the proprietor of half of Land Parcel Githunguri/Gathangari/84 and held the same on behalf and in trust of the plaintiffs and in the alternative a declaration that the plaintiffs are entitled to the said one half of the suit land under adverse possession and that the aforesaid trust or claim for adverse possession be determined and the defendant do transfer to the plaintiff's one half of the suit land.

After the hearing of the suit concluded the court made an order in terms of the claim as above. The defendants intend to appeal against the said order and the notice of appeal has been filed.

Pending such hearing of the appeal a stay is sought. The principles on which the court grants stay are well settled.

Two conditions have to be satisfied by the applicant: first, it must be shown that the intended appeal is arguable and, secondly, it must also be shown that if stay which is sought is withheld, the appeal will be rendered nugatory.

This being a land dispute and the defendants having expressed their desire to be heard by the Court of Appeal, they should not be denied the right to do so as was stated by the Court of Appeal (Tunoi JA) in the case of **SAMPSON NDERITU KARITU V. MARTHA WATETU KARITU AND ANOTHER CA NO NAI 168 OF 2004**.

According I exercise my discretion in favour of the applicants and grant the order as prayed.

Costs of this application be costs in the Appeal.

Dated and delivered at Nairobi this 17<sup>th</sup> day of October 2008.

**J. L. A. OSIEMO**

**JUDGE**