



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

**AT NAIROBI**

**CIVIL CASE 554 OF 2007**

**M. N. NG'ANG'A**

**ALEX N. THANGEI**

**J. M. THIGA t/a WARUHIU K'OWADE &**

**NG'ANG'A ADVOCATES ..... PLAINTIFFS/RESPONDENTS**

**VERSUS**

**LAB CONSTRUCTION LIMITED..... 1<sup>ST</sup> DEFENDANT/APPLICANT**

**LAB ENTERPRISES LIMITED..... 2<sup>ND</sup> DEFENDANT/APPLICANT**

**KISUMU CONCRETE PRODUCTS LIMITED .....3<sup>RD</sup> DEFENDANT/APPLICANT**

**LALJI KARSAN RABADIA ..... 4<sup>TH</sup> DEFENDANT/APPLICANT**

**RULING**

(1) In the notice of Motion filed on the 10<sup>th</sup> June 2008, the Defendants have sought a review of the Orders I made on the 13<sup>th</sup> May 2008 that the Defendants do pay the sum of Kshs.3,138,174/30 into court within fourteen (14) days of the date of the Order.

(2) The application is based on the grounds that owing to prevailing economic circumstances, the Defendant's business is low. These grounds are reiterated in the supporting affidavit of Lalji Rabadia the 4<sup>th</sup> Defendant and Director of the other Defendants.

(3) The application must fail for a number of reasons which include:-

a) **The provisions of Order XLIV of the Civil Procedure Rules on Review require the Defendants to show the existence of a new matter or evidence which were not within their knowledge when the application for stay was made. They have not established this but merely reiterated the same grounds upon which their application for stay was made.**

b) **The Defendants have not shown why they cannot use the Bond they offer as security to secure funds from a Bank or other institution for depositing to court as required in my order.**

c) **There is no evidence by way of accounts or otherwise to support the averment that the business of the Defendants was affected by the post election violence – that position was in any event subsisting when I made my order on the 13<sup>th</sup> May 2008 and was taken into account on the basis of the evidence the Defendants availed to the court at the time.**

Accordingly, the Notice of Motion filed on the 10<sup>th</sup> June 2008 be and is hereby dismissed with costs to the Plaintiffs/Respondents.

(4) On the Notice of Motion filed on the 8<sup>th</sup> October 2008, the Defendants seek a stay of sale of their motor vehicles on the basis that as at the 3<sup>rd</sup> October 2008 when the attachment was made, there were orders of the court subsisting.

(5) Having perused the court record, it is clear that the court of its own motion extended certain orders on the 23<sup>rd</sup> June 2008 **“to the next hearing date of the motion”** dated the 10<sup>th</sup> June 2008. The Defendants fixed such motion for the 16<sup>th</sup> September 2008 but when the same came up for hearing before Lesiit, J on that day, no orders were extended. The orders accordingly lapsed and are no longer subsisting nor were they in force when the attachment was made.

(6) Accordingly, the application also failed and it be and is hereby dismissed with costs to the Plaintiff/Respondent.

Dated and delivered in open court this Fourteenth day of October, 2008 at 12.45 p.m. in the presence of both learned counsel.

**P. Kihara Kariuki**

**Judge.**