



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

Civil Appeal 427 of 2008

AMARNATH ENT LIMITED.....APPELLANT

VERSUS

FRANCIS KAIGUA T/A SCRAP METAL DEALERS.....RESPONDENT

R U L I N G

Amarnath ENT Ltd who is the appellant in this appeal has moved this court under Section 3A of the Civil Procedure Act and Order XLI Rule 4 of the Civil Procedure Rules seeking *inter alia*, an order of stay of execution of the judgment entered against him in CMCC No.13392 of 2006 on the 7th August, 2008 pending the hearing and disposal of the appeal. It is the appellant's contention that its appeal has high chances of success and that unless the order for stay of execution is granted, the appellant will suffer substantial loss as his appeal will be rendered nugatory. The appellant has deposited a sum of Kshs.285.000/= as security. In support of the application, the appellant's advocate has relied on the case of *Savings and Loan Kenya Ltd vs Odongo (1987) KLR 294* and the case of *Mukuma vs Abuodha (1988) KLR 645*.

The application is opposed by the respondent Francis Kaigua T/A Franca Scrap Metal Dealers. It was submitted for the respondent that the appellant has been guilty of inordinate delay in bringing the application. Secondly it is maintained that contrary to the court orders made on 18th August 2008, the appellant has not deposited the full decretal sum in court and that even what was deposited was done outside the period given by the court. The court was therefore urged to dismiss the application.

I have carefully considered the application, the affidavit in support and in reply and the submissions made by both parties. I find it expedient that an order for stay of execution pending appeal should issue to enable the appellant pursue his appeal. However, so as to balance the interest of both parties, I will impose the following conditions: -

- (i) That the appellant shall deposit the full decretal sum into court as ordered on 18th August, 2008, and therefore the balance of Kshs.29,609/= shall be deposited within 7 days from the date hereof.
- (ii) That the appellant shall file and serve a record of appeal within 90 days from the date hereof and take all necessary action to facilitate the speedy disposal of the appeal.
- (iii) That the cost of this application shall be in the appeal.

Orders accordingly

Dated and delivered this 7th day of November, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the appellant absent

Ochoki H/B for Kanyi for the respondent