



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 175 of 2008**

**FRED NABANGI T/A AMICE ENGINEERING SYSTEMS.....APPELLANT**

**VERSUS**

**STANLEY WERE.....RESPONDENT**

**R U L I N G**

1. On the 24<sup>th</sup> April, 2008, this court issued an order for stay of execution pending appeal on the condition that the appellant, Fred Nabanga t/a Amice Engineering Systems, either deposits the sum of Kshs.500,000/= into an interest earning account in the joint names of the parties' advocates or alternatively provides a guarantee from a financial institution for payment of the decretal amount. The court further ordered that the security be provided within 21 days of the date of that order and in default of the security being provided within the said period the order for stay of execution shall lapse.
2. By a notice of motion dated 7<sup>th</sup> October, 2008, the appellant has now moved this court under Section 95 of the Civil Procedure Act and Order XLIX Rule 5 of the Civil Procedure Rules seeking to have the time within which to comply with the orders issued by the court on 24<sup>th</sup> April, 2008 enlarged and extended.
3. The appellant explains that he has now raised the cash Kshs.500,000/= required as security and that his efforts to raise the money earlier were frustrated when his brother who had earlier offered to give him the money changed his mind and his wife efforts to raise the money from her employer were not successful because the company where she was working was undergoing rebranding.
4. The respondent Stanley Were, objects to the application contending that the orders issued by the court lapsed and the application subject of the orders is already spent. It was contended that no material had been laid before the court upon which the order sought can be granted.
5. I have considered the application, the affidavit in support and in reply. First, the orders of 24<sup>th</sup> April, 2008, were to expire after 21 days if the security was not deposited. The security not having been provided within the stated period, the orders of 24<sup>th</sup> April, 2008 lapsed. Although the applicant has explained the difficulties he encountered in raising the required security, the applicant has not explained the apparent inordinate delay in bringing this application as the application was brought over 5 months after the given period had expired. That is an unreasonably long delay. Moreover, the appellant maintains that the attached property does not belong to him. However, that is immaterial as there are appropriate procedures for objection proceedings.
6. The applicant has not shown any just cause as to why this court should exercise its discretion in his favour. His application dated 7<sup>th</sup> October, 2008 is accordingly dismissed.

Dated and delivered this 18<sup>th</sup> day of December, 2008

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Wati for the appellant/applicant

Advocate for the respondent absent