



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

**Civil Appeal 419 of 2008**

**FREDRICK NGANGA KAHURO.....APPLICANT**

**VERSUS**

**KUURI J. NGETHE.....1<sup>ST</sup> RESPONDENT**

**NJUGUNA W. MUGANE.....2<sup>ND</sup> RESPONDENT**

**PETER N. MUGEREKI.....3<sup>RD</sup> RESPONDENT**

**JOHN P. M. GATETE.....4<sup>TH</sup> RESPONDENT**

**GERALD N. MRUTTU.....5<sup>TH</sup> RESPONDENT**

**PAUL K. WANJOHI.....6<sup>TH</sup> RESPONDENT**

**DAVID N. NGOTHO.....7<sup>TH</sup> RESPONDENT**

**JESSE A N KAMAU.....8<sup>TH</sup> RESPONDENT**

**MARGARET N. NDUNGU.....9<sup>TH</sup> RESPONDENT**

**LORNA C. TUMBO.....10<sup>TH</sup> RESPONDENT**

**R U L I N G**

The applicant, Fredrick Nganga Kahuro, being dissatisfied by an order made by the SRM in Milimani CMCC No.11464 of 2006, rejecting his application to set aside summary judgment which had been entered against him, has filed an appeal against the said order. By a notice of motion dated 19<sup>th</sup> August, 2008, the applicant has moved this court seeking an order of stay of execution of the judgment and decree pending the hearing and determination of his appeal. The applicant maintains that unless the order of stay is granted he will be required to pay a sum of Kshs.1,219,996/= and this will render his appeal which has good chances of success a mere academic exercise.

The respondents object to the application contending that the applicant's appeal has no chances of success as the applicant had admitted the respondents' claim, and judgment was therefore entered for admission. It was contended that the applicant had not demonstrated that he will suffer any substantial loss if the orders sought are not granted. The respondents further maintained that the sum of Kshs.400,000/= which

was deposited in court, pursuant to a court order, was not sufficient security for the decree.

I have carefully considered the application, the contending arguments of the parties and the authority which was cited. It is premature at this stage to prejudge the merits of the applicant's appeal. Indeed, it is important that the applicant has an opportunity to exercise that right. I do note that the applicant has already deposited a sum of Kshs.400,000/= in court as security. However, it is evident from a copy of the attachment by Daystar Auctioneers, annexed to the applicant's application, that the amount is about Kshs.802,788/=. The security provided is therefore not adequate. Accordingly, I will grant the order for stay of execution pending appeal on the following conditions: -

- (i) That the applicant shall deposit a sum of Kshs.800,000/= into an interest earning account in the joint names of the parties' advocates within 21 days from today.
- (ii) That the sum of Kshs.400,000/= already deposited by the applicant into court shall be released to the parties' advocates as part of the money to be deposited into the interest earning account.
- (iii) The applicant 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.
- (iv) In the event that the applicant fails to comply with condition No.(i) or (ii) above, the order for stay of execution shall lapse.
- (v) If the appeal is not disposed off within 12 months from today, the order of stay of execution shall lapse.

Those shall be the orders of this court.

**Dated and delivered this 16<sup>th</sup> day of December, 2008**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Gatuguta for the appellant/applicant

Advocate for the respondent absent