



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
Civil Case 19 of 2007**

**PONANGIPALLI VENKATA RAMANA RAO.....1<sup>ST</sup> PLAINTIFF**

**KOLLURI VENKATA SUBBARAYA KAMASASTRY.....2<sup>ND</sup> PLAINTIFF**

*(Joint Receivers and Managers of MRC Nairobi (EPZ Ltd.)*

**EABS BANK LIMITED.....3<sup>RD</sup>**

**PLAINTIFF**

**VERSUS**

**MRC NAIROBI EPX LIMITED.....1<sup>ST</sup> DEFENDANT**

**MAERSK KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**PUNCHIHEWA PRASADA ROBERT.....3<sup>RD</sup> DEFENDANT**

**PUNCHIHEWA MERCY SUSILA.....4<sup>TH</sup> DEFENDANT**

**RULING**

Application by Notice of Motion under provisions of order 41 Rule 4 seeking stay of execution pending appeal against those orders.

The grounds on which the application is based is that the applicant has filed a Notice of Appeal against the decision of Court dated 19.11.08 and he is likely to suffer substantial loss and damage unless stay order is granted. And that there is a good arguable appeal and there is already security deposited under court order made on 16.07.08.

The application is supported by affidavit of Stella Kariuki, Legal Officer of the second Defendant. She swears that an application for stay Notice of Motion dated 14.07.08 was filed for purpose of staying orders granted by court on 04.10.2009 and 29.11.2007.

On 16.07.08, stay was granted upon payment of USD 40,000 or its equivalent in court. The said sum was deposited in court on 18.07.08. Those orders were made ex parte and it was expected that the application would be fixed for hearing inter partes. However, when the matter came up for hearing there was objection from Respondent that the application was in contempt of Court Order made in this case and dated 29.11.07.

The court Order Was:

1. *That property of the 2<sup>nd</sup> Respondent be attached until such time the 2<sup>nd</sup> Respondent will have complied with the Court Order issued by this Court on 09.07.07*

2. *That in default of such compliance, the said property of the 2<sup>nd</sup> Respondent be sold to compensate the said Applicant in the sum of Kshs. 102,910,731.25 and USD 3,034,903.*

That was the order of the Court. It means that when the 2<sup>nd</sup> Defendant came to court and offered to pay USD40,000 in exchange for the release of some containers, this was a different situation altogether. The ex parte stay granted was not connected with the payment of money ordered by court on 29.11.07.

Therefore, the Applicant 2<sup>nd</sup> Defendant is still in contempt of court for failing to comply with order of the Court aforesaid. This Court has denied the 2<sup>nd</sup> Defendant audience until the contempt has been purged. The party must proceed to Court of Appeal to file appeal against order of High Court. This Court cannot reverse its decision when there is an Appeal proposed.

The application is dismissed with costs.

DATED this 1<sup>st</sup> day of December 2008.

**JOYCE N. KHAMINWA**

**JUDGE**