



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU  
Civil Case 88 of 2006**

**DUNCAN GITHINJI NJERU.....APPLICANT**

**VERSUS**

**MINISTER OF FINANCE.....1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF INSURANCE.....2<sup>ND</sup> RESPONDENT**

**STATUTORY MANAGER UNITED INSURANCE.....3<sup>RD</sup> RESPONDENT**

**HON ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**MONICA WACUKA NGERA.....INTERESTED PARTY**

**RULING**

Notice of Motion dated 17/2/2007 seeks stay of court orders made on 16/1/2007. That order was made only in respect of HCC No. 75/1998 where the applicant is a judgment debtor. The orders would empower the Respondent herein (Decree holder in 75/1998) to execute decree he holds against the Applicant. No appeal has been filed against that decree. After perusing the application and the affidavit filed by both parties, it is my finding that the Applicant herein has embarked on a path calculated to delay the Respondent enjoyment of the fruits of his judgment. There is no court order compels the Applicant's Insurance Company to pay the Respondent the amount of the decree. There is a contractual relationship between the applicant and his insurer. Constitutional issues may arise in the said contractual relationship. I do not find that such relationship has anything to do with the recovery of decree by Respondent against the Applicant.

I find no merit in this matter and I must exercise my inherent powers to prevent the Respondent from continuing to be denied his rights by the Applicants.

I find no constitutional issue between the Respondent and the Applicant. It is infact the Respondents constituted rights which being breached in this matter of execution of a money decree.

Furthermore the requirements prescribed under order 41 Rule 4 C.P.C are not complied with. No substantial loss is demonstrated and the Applicant denies the need to give security.

I find no sufficient cause has been shown to warrant the issue of stay order.

I dismiss the application with costs to Respondent.

Dated this 10<sup>th</sup> July, 2007.

**J. N. KHAMINWA**

**JUDGE**

**10/7/2007**

**Khaminwa – Judge**

**Njue –Clerk**

**Mr. Njagi for Applicant**

**N/A**

**Read in open court.**

**J. N. KHAMINWA**

**JUDGE**