



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc. Appli. 1268 of 2005**

**CITY COUNCIL OF NAIROBI.....**  
**APPLICANT**

**VERSUS**

**JUDITH A. GUSERWA.....RESPONDENT**

**RULING**

By a Chamber Summon dated 24<sup>th</sup> August 2005 and filed the same day, the applicant sought the following orders among others:

1. That there be stay of execution of the judgment decree and all consequential orders in **NAIROBI CMCC NO.3881 OF 2002 (JUDITH GUSERWA VS NAIROBI CITY COUNCIL)** pending the hearing and determination of the intended Appeal or further orders of the court.
2. That there be enlargement of time to enable the Applicant institute Appeal against the Respondent arising from the judgment and decree of **NAIROBI CMCC NO.3881 OF 2002** dated 9<sup>th</sup> September 2004.
3. That the Draft Memorandum of Appeal annexed to the present Application and marked “MNM” be deemed duly filed upon payment of requisite court fees.

That application was filed about one year after the judgment was delivered. The application was heard by Kubo, J who granted the same on the following conditions:

- (1) Stay of execution of the judgment in **NAIROBI CMCC NO. 3881 OF 2002** pending the filing and hearing and determining of the intended Appeal.
- (2) Time to file appeal enlarged and the Draft Memorandum of Appeal marked MNM annexed to the application be deemed duly filed upon payment by the applicant herein of the requisite court filing fees which must be paid within 10 days.
- (3) Additionally the applicant herein shall deposit also within 10 days the Shs.516,664/= presenting the judgment sum plus costs and interest as at 25<sup>th</sup> October 2005 in an interest earning account to be operated jointly by the advocates for the applicant and respondent pending the outcome of the appeal.

The applicant failed to comply with the above conditions within the time ordered by the court. The period of the order expired on 6<sup>th</sup> November 2005. By Notice of Motion dated 2<sup>nd</sup> December 2005 but

filed on 5<sup>th</sup> December 2005 the applicant again seeks the enlargement of time for such period as the Honourable court deems expedient to enable the Applicant comply with the order made on 27<sup>th</sup> October 2005.

The application is opposed by the respondent on the ground that judgment was delivered on 9<sup>th</sup> September 2004 and all along the applicant did nothing until the time the respondent was in the process of execution and that is the time the applicant rushed to court. They were granted enlargement of time but on certain conditions which they failed to comply with. For the applicants again to be heard to seek enlargement of time amounts to abuse of the court process.

The applicant's application was granted on certain conditions and within a given time. Once the applicant failed to comply with those conditions within that given time, that leave lapsed and became inoperative after the 10 days condition granted by the court.

The applicant's application is dismissed.

The plaintiff is at liberty to execute the decree.

The applicant will bear the costs of this application.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of February 2006.

**J.L.A. OSIEMO**

**JUDGE**