



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Civil Appeal 61 of 2005**

**LAWRENCE KIMATHI KWIRIGA.....APPELLANT**

**VERSUS**

**MICHAEL MIRITI KABURU.....RESPONDENT**

**RULING**

The applicant is appellant in HCC Appeal No. 61 of 2005.

He has now filed Notice of motion seeking Stay of Execution of decree pending the hearing of the Appeal.

The provisions as to stay are set out under Order XL1 Rule 4 of C.P.C. which states that filing of an appeal shall not operate as stay of execution of decree but that an appellant may show sufficient cause why stay should be granted conditions of stay are:

- (a) Court to be satisfied that substantial loss may result if order not granted and application is brought without delay.
- (b) That such security as the court orders be given by applicant for due performance of such decree or order as may be ultimately be binding on him.

The affidavit on support emphasizes that the appeal has overwhelming chances of success. They promise they are willing to give security as the court may order. They allege the Respondent is not a man of mean but no evidence of this is exhibited. The application is opposed by the Respondent the next of kin of the Plaintiff Michael Miriti Kaburu. The Respondent emphasizes the serious injuries suffered by his son and the inadequacy of the award. And prays that the award should be deposited in a bank and sufficient sum (½) he released to him to look after the incapacitated Plaintiff.

I have perused the application with supporting affidavit and Replying Affidavit. I have also considered the submissions of both counsels. It is required that substantial loss be shown. In this case the Respondent is said to be totally incapacitated and the litigation is being conducted on his behalf.

The Appellant has undertaken to give security as required.

I therefore find that justice demands that the amount of decree be deposited in an interest earning joint account to be held by the respective advocates in a reputable bank pending the hearing of the appeal. The deposit shall be within the next 30 days from today.

In view of the urgency of the situation the appellant shall prosecute his appeal within the next 5 months failing which the stay order shall lapse.

Dated 15<sup>th</sup> day of March 2006.

**J.N. KHAMINWA**

**JUDGE**