



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

**Civil Appeal 71 of 2006**

**PAUL MURUNGA ..... APPELLANT**

**VERSUS**

**NELSON KABURU FELIX ..... RESPONDENT**

**(Being an appeal against the ruling of the Chief Magistrates Court at Milimani Commercial Court, Civil Case No.473 of 1995 by the Honourable Magistrate Mr. Cheronno on the 26<sup>th</sup> day of January 2006.**

**BETWEEN**

**NELSON KABURU KABURU FELIX ..... PLAINTIFF**

**VERSUS**

**PAUL MURUNGA ..... DEFENDANT**

**RULING**

**1. BACKGROUND OF APPLICATION**

1. The appellant/applicant, used to be an auctioneer, now deregistered. He had certain work with the respondent/respondent an advocate of the High Court who appears in person in this application.
2. The respondent/respondent sued the appellant applicant in the subordinate courts for moneys owned and due. It is alleged when the suit came up for hearing, dates having been duly given in court the defendant appellant was absent. He alleged that he was not aware of the hearing date of his case. His former advocate and the respondent/respondent deponed that he was present when the hearing date was taken.
3. When the case came up for hearing an exparte judgment was entered.
4. The appellant/original defendant filed the appeal before court stating that there was a related ruling in case EJ473/95 in which this same matter emanates. He filed this criminal application before this appeals court in which he prayed that there be a stay of execution of the decree and judgment entered on 10.1.05

and all further proceeding pending before that particular court till the determination of the appeal lodged against the ruling of 26.1.06 dismissing the application for setting aside the said ruling.

5. This application was opposed. The respondent stated that the appellant was basically not truthful on this matter and as such ought not to be granted the prayers sort.

II: Findings

6. The application for stay of execution be and is hereby granted, with costs being in the cause, until the determination of this appeal.

Dated this 18<sup>th</sup> day of May 2006 at Nairobi.

M.A. ANG'AWA

JUDGE

Nelson Kaburu Felix in person respondent/respondent/original plaintiff

A.N. Ngunjiri & Co. Advocates for the appellant/applicant original defendant