



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Civil Appeal 134 of 2006**

**SIMON NDUNGU MUNGAI ..... APPELLANT**

**VERSUS**

**PETER NGETHE GATHIGA ..... RESPONDENT**

**(An appeal from the Ruling and orders made on the 24<sup>th</sup> February 2006 by the Honourable**

**Mrs. Kabucho, resident magistrate Kiambu RMCC No.85 between**

**SIMON NDUNGU MUNGAI .....PLAINTIFF/APPLICANT**

**AND**

**PETER NGETHE GATHIGI ..... DEFENDANT/RESPONDENT**

**RULING**

**BACKGROUND**

1. The applicant/appellant/original plaintiff applied to amend his plaint to add a sum of Ksh.100,000/- to his claim. The trial magistrate on hearing this application found it had no merit and dismissed the same.
2. The applicant/appellant/original plaintiff – appealed against that ruling. In the meantime the proceedings of the lower courts were set for hearing in the near future.
3. The applicant filed the current application for stay of proceeding pending appeal on 8.3.06 and filed on 7.3.06.

**II: Findings**

4. In the normal circumstances there should be no stay for proceeding on an Interlocutory Application. Nonetheless in this circumstances on the issues raised on amendments of the plaint touches on the question of the right to be fairly heard.
5. I allow the said application and order that:-

“there be a say of proceeding in Kiambu Senior Resident Magistrates Court Case No.85/01 pending the determination of the appeal at whatever stage. Costs in the cause.

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

M.A. Ang'awa

Judge

Mang'erere Ngisa & Co. Advocates for the appellant

C.K. Chege & Co. Advocates for the defendant