



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

**Civil Appeal 1091 of 2004**

**GARISSA COUNTY COUNCIL.....**

**APPELLANT**

**VERSUS**

**ABDI RAHMAN ALI ABA ABASS.....**

**RESPONDENT**

**R U L I N G**

This application, dated 8/7/05, under Order 41 Rule 4 of the Civil Procedure Rules seeks stay of execution of the Ruling dated 2/12/04 pending the appeal herein. Then costs.

The application, which is supported by the Affidavit of Abdi Rabe, clerk to the appellant County Council, is on the grounds that the Ruling appealed against was a Summary Judgment in the face of a defence; that the Appellants Books of Account show that the Respondent was fully paid his allowances and simply want double payments.

In opposition, the Respondent avers, **inter alia**, that the applicant is guilty of inordinate delay; and the appeal stands no chance of success, and that no substantial loss has been shown by the applicant.

I have perused through the pleadings and submissions by Learned Counsel for both sides, and I have reached the following findings and conclusions.

The applicant meets all the tenets of Order 41, Rule 4, of the provisions under which the application is brought. There is a five month's delay in filing the application after the Ruling. But that is well explained by the Medical Report, enclosed, which shows that the Appellant's Counsel had been in a Road Accident on 18/1/05 and only resumed duty on 1/7/05. The application could therefore not have been filed or canvassed earlier. The applicant has also offered security as required by Order 41 Rule 4 of the Civil Procedure Rules.

Accordingly, I rule as under:

1. Grant stay of execution of the application herein, on condition that the appellant/applicant, deposits in this court, K.Shs.385,000/- within 21 days from today.
2. It is also ordered that the costs of this application abide the appeal.

DATED and delivered in Nairobi, this 18<sup>th</sup> Day of July, 2006.

**O.K. MUTUNGI**

**JUDGE**