



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

**Civil Suit 1199 of 2001**

**LAXCON HARDWARE & SPARES LIMITED.....PLAINTIFF**

**VERSUS**

**PLANTATION FERTILIZERS LIMITED.....1<sup>ST</sup> DEFENDANT**

**MUGAMA FARMERS CO-OP UNION LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

The plaintiff on an application for stay of execution obtained interim orders of stay pending inter partes hearing. That interim order was extended from time to time when the application did not proceed for hearing. On 20<sup>th</sup> June 2006 when the matter appeared before me the counsel Miss Omullo sought on an adjournment and indeed stated:

**“I thought today’s matter is mention, so I am not ready to proceed. I seek another hearing date and extension of interim orders....”**

That application was opposed by the 1<sup>st</sup> defendant who also sought that the interim orders be discharged. Indeed those interim orders were discharged by the court.

The plaintiff has now moved this court by way of Notice of Motion seeking, under Section 3A of the Civil Procedures Act, that the court do reinstate the stay orders.

I have considered counsel’s submissions and the affidavit evidence. I am satisfied that the plaintiff could have genuinely been confused on what was coming up on 20<sup>th</sup> June 2006, whether it was the hearing of the stay application or it was its mention with a view of obtaining a hearing date. Plaintiff’s advocate, Mr Omotii, said that his brief on 20<sup>th</sup> June 2006 was held by Miss Omullo who was not familiar with the matter, and who held the mistaken belief that the same was coming up for mention with a view of fixing a hearing date.

The court is of the view that in the practice of Law, which practice is conducted by men and women, who are likely to err, when they do indeed err the court is in a position, by invoking its inherent power to correct those errors in order to do justice. I am of the view that this is one such case and the court accordingly grant the following orders:

**(1) That the court does hereof re-instate and extend the interim**

**Orders granted on 16<sup>th</sup> December 2005 pending the next hearing**

**Date of the application dated 15<sup>th</sup> December 2005.**

**(2) At the reading of this ruling parties shall be given a hearing date of the application dated 15<sup>th</sup> December 2005.**

**(3) There shall be no orders as to costs in respect of the application dated 21<sup>st</sup> June 2006.**

**MARY KASANGO**

**JUDGE**

Dated and delivered this 10<sup>th</sup> July 2006.

**MARY KASANGO**

**JUDGE**