

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI COMMERCIAL COURTS

Civil Suit 1730 of 2000

CYRUS M. KAMAU.....PLAINTIFF

VERSUS

UNIVERSAL F & B CONTRACTORS LIMITED.....DEFENDANT

R U L I N G

The defendant has brought a Notice of Motion dated 27th July 2006 which is brought under Order XLI rule 4 of the Civil Procedure Rules.

The application seeks temporary stay of the judgment herein dated 10th June 2005 pending the hearing and the determination of the defendant's appeal.

Although the application was served upon the plaintiff, plaintiff was Not represented when the same came up for hearing on 27th September 2006. defendant's counsel stated from the bar that the parties advocates had opened a joint account where the amount provided by the defendant of kshs 1 million was deposit which amount the parties agreed would be security in support of the stay sought by the defendant. Defence counsel gave the court a copy of the cheque for the aforesaid amount. In support of the application the defendant's director swore an affidavit whereby he stated that the defendant being dissatisfied with the judgement delivered on 10th June 2005, instructed its counsel to file an appeal. The defendant counsel has filed an appeal, namely Civil Appeal Number 189 of 2005. Defendant director further deponed that the defendant's properties were in imminent danger of being attached by the decree holder. That the respondent will not suffer any prejudice if an order of stay is granted.

The court having considered the defendant's application is of the view that the same is merited. The defendant has provided security for the stay by the deposit held in the counsel's joint account. The defendant's averments that it will suffer if execution proceeds was uncontraverted and the court accepts the same.

Accordingly the court grants the following orders: -

- (1) That the defendant is granted stay of execution of the decree herein pending the hearing and determination of the Appeal No. 189 of 2005.**
- (2) That the costs of the Notice of Motion dated 27th July 2006 shall abide with the afore stated appeal.**

Dated and delivered this 6th day of October 2006.

MARY KASANGO

JUDGE