



**REPUBLIC OF KENYA**

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

**Civil Suit 994 of 1998**

**SAMUEL K. S.....1ST PLAINTIFF**

**HEMA INVESTMENTS LTD.....2ND PLAINTIFF**

**VERSUS**

**KENYA INDUSTRIAL ESTATES.....DEFENDANT**

**RULING**

The application is to stay execution of the decree herein for an award of an amount in excess of Kshs 20 Million.

There has been delay in the making of the application by the Applicant made on the 30/9/2004 in respect of a judgment delivered on 21/1/04.

A court will refuse an application for stay where there has been unreasonable delay. This however can be balanced against the merits of the matter. In a deserving case a court can in its discretion forgive delay. I do not find the delay in this matter so inordinate that I will not exercise my discretion if I am of the view that the merits deserve an order.

However, the substantial loss submitted is that the Applicant has financial problems. This is not a reason for an order. In this case, I accept that the Defendant is not a man of straw and could repay the decretal amount.

So far as security is concerned, a number of copies of title deeds have been exhibited; however, there is nothing to say that these are unencumbered as Mr. Omita submits. I do not see that substantial loss has been demonstrated and that adequate security has been offered.

I will grant a stay on condition that if the decretal amount of Kshs 20 Million is paid into an interest bearing account in the names of the parties' advocates within 60 days from today a stay will be granted failing which execution will issue. Costs to the Respondent.

**DATED AND DELIVERED AT NAIROBI ON 17TH January 2005.**

**P.J RANSLEY**

**JUDGE**