



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL 661 OF 2001**

**PAUL IMISON..... APPELLANT**

**VERSUS**

**JODAD INVESTMENTS LIMITED .....RESPONDENT**

**RULING**

This is an application by the Respondent who was successful in the court below to have the court file of that court returned to it to enable the Respondent pursue execution of the decree made in his favour.

It is not in dispute that the decree passed against the Appellant has not been stayed as the Appellant did not comply with the conditions for stay given by me on 14<sup>th</sup> November, 2001 requiring him to deposit the decretal sum in court.

In his Replying Affidavit sworn on 3<sup>rd</sup> February, 2005 in opposition to the application, the Appellant complained that the court file sought to be referred back to the lower court was an integral part of “the Record of Appeal” and such a move would delay the hearing of the appeal. He also offered to give alternative security pending the appeal.

I do not think that the Appellant can resist the Respondent’s application. To begin with, the Appellant is in contempt of this court’s order made on 14<sup>th</sup> November, 2001. Since that time, the Appellant has avoided execution and denied the Respondent from enjoying the fruits of its Judgment. The fact that the Appellant now offers alternative security is unhelpful so long as it has neither applied to set aside or review the earlier order which dealt with the question.

In the result, I allow the Respondent’s application dated 16<sup>th</sup> December, 2004 as prayed and award it costs of the application.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of March, 2005.

**ALNASHIR VISRAM**

**JUDGE**

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