



**REPUBLIC OF KENYA**

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

**Misc Civ Appli 97 of 2003**

**SOLOMON OLUNGU**

**MOFFAT SAKALA OPANGA ..... APPLICANTS**

**V E R S U S**

**DANNY DAVID OPANGA ..... RESPONDENT**

**R U L I N G**

The two applicants were the Defendants in SRM Civil Suit No. 34 of 2001. They entered appearance to the suit and filed defence but did not attend the hearing of the suit which proceeded ex-parte. Judgment was delivered on 18.3.2003 and upon becoming aware of it on 11.4.2003, their advocates applied for judgment and proceedings on the same day and on 28/07/2003 the judgment and proceedings were supplied. The Application before the court seeking enlargement of time was dated 30/7/05 and was made on 31/7/03. Decree was extracted but has not been executed. The applicants also sought stay.

I have carefully perused the application and the supporting affidavit sworn on 30.7.03 by the 2nd Applicant in support of the application. I have also perused the affidavits in opposition to the application sworn by Messrs Danny David Opanga, Nichodemus Mboi Opanga and the grounds of opposition by Messrs B. N. Kiptoo & Co.

Advocates for the Respondents. There was no inordinate delay on the part of the applicants in applying for stay and enlargement of time. I am satisfied that the ends of justice will be served by granting the application. I allow it. I enlarge the time for lodging appeal by the Applicants, Messrs Solomon Olungu Opanga and Moffat Sakala Opanga to 21st December, 2005 by which date Memorandum of Appeal must be filed but, the Memorandum of Appeal already filed may be deemed to have been duly filed if the requisite filing fee is paid by that date.

I also order stay of execution of the decree in the Senior Resident Magistrate's Court Civil Case No.34 of 2001 at Vihiga pending the hearing and determination of the appeal.

As the decree of the lower court relates to immovable property and having regard to all the circumstances of the case, I further order the applicant to deposit as security within thirty days from today a sum of Shs.20,000/=. Costs of the application shall abide the result of the appeal.

**Dated at Kakamega this 17th day of November, 2005**

**G. B. M. KARIUKI**

**J U D G E**