



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

**Civil Case 1015 of 01**

**SAMUEL KARIUKI ..... PLAINTIFF**

**VERSUS**

**JOHANN DISTELBERGER ..... DEFENDANT**

**R U L I N G**

A motor vehicle accident collision occurred between the defendants vehicle and that of the plaintiffs vehicle. I determined the issue of liability, this being a TEST suit on the 18.12.02 at the ratio of 90% against the defendant and 10% against the plaintiff. The parties returned and on the 28.10.03, I determined the issue of quantum. It has transpired that the plaintiff has filed an appeal to the Court of Appeal against the decision of this court. Execution seem to have taken place or is in the process of being done. The defendant then filed this current application dated the 24.5.04 seeking that there be a stay of execution of this courts decree. In brief:-

The defendant/applicant stated that they conceded to the award made against them in the trial for Special damages (Ksh.19,960/-) and the personal injury claim (of Ksh.100,000/-) that was brought under the general damages claim. They have now realized that the material loss claim of Ksh.525,000/- was infact awarded by this court when this court though, failed to note that the vehicle was not owned by the plaintiff and as such he was not entitled to this award. The defendant prays that this claim be dismissed. I find that the issue of ownership of the motor vehicle was never an issue as per the agreed issue of 20.3.02. The defence spoke of the plaintiff not having locus to bring a suit to court but this defence was never pursued or proved

I would find that the prayer for stay of execution, which has been opposed by the plaintiff/respondent has no merits. As what is intended to be cross appealed was not an issue to be determined by the parties. I hereby dismiss the application for stay of execution with costs to the plaintiff.

**Dated this 8th day of July 2004 at Nairobi.**

**M.A. ANG'AWA**

**JUDGE**

**Nelson Kaburu advocate for plaintiff**

**Macharia Njeru advocate for defendant**