



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CIVIL APPEAL NO. 65 OF 1999**

**OSERIAN DEVELOPMENT COMPANY LTD .....APPELLANT**

**VERSUS**

**SIMON MUTUKU WAMBUA .....RESPONDENT**

**RULING**

This is an application under Order XLI Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (Cap 21). In it the Appellant seeks, in the main the following order:

***“2. That this Honourable Court be pleased to order a stay of execution of the decree pursuant to the Honourable Court’s ruling delivered on the 5 th March, 2003 pending the hearing and determination of the intended appeal to the Court of Appeal.”***

The Application was brought under Certificate of Urgency. At the time of certifying the application, I required the Appellant to deposit the entire decretal amount in Court which I was informed by Mr. Mahida for the Appellant that the same had been so deposited. Both parties are secured. If the Appellant should fail, the Respondent will collect the decretal sum from the Court. The Appellant is worried that if the decretal sum is paid to the Respondent, it may not be able to recover it without difficulty from the Respondent. That was not controverted. The Respondent’s Advocate also challenged the Notice of Appeal filed herein but I think that is a matter that should be left for the determination of the Court of Appeal. Considering these matters, I allow the Appellant’s application for stay on the same condition imposed by me on March 13, 2003 save that the said decretal sum shall be held in Court pending the determination of the Appeal.

**Dated and Delivered at Nakuru this 2nd day of July, 2003.**

**ALNASHIR VISRAM**

**JUDGE**