



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 84 OF 1994**

**ELEGANT FREIGHTERS LTD ..... PLAINTIFF**

**VERSUS**

**FREIGHT CONSULTANTS LTD ..... DEFENDANT**

**RULING**

I delivered a judgment in this suit on 14th February 2002. I found judgment for the plaintiff against the defendant in the sum of Kshs.2,158,019.48.

The defendant moved to court for a stay of execution under a certificate of urgency, though Mr. Mutiso, advocate.

The application was heard by Kuloba, J who granted an ex parte stay of execution order for 60 days pending an inter parte hearing.

Thereafter, the advocates took dates in the Registry, by consent, for the inter partes hearing of the application for stay of execution.

The application was tabled before me on 20th June 2002. On that day Mr. Mutiso for the defendant failed to appear in court. He sent an advocate who requested for adjournment on the grounds that Mr. Mutiso was appearing before another Judge, to wit, Hon. Justice Mbaluto.

I refused to grant the adjournment sought and proceeded with the hearing of the application.

Mr. Majanja who was representing the decree holder addressed the court saying that he did not object to the stay order being granted if the decretal sum could be deposited. Neither Mr. Mutiso nor the advocate sent by him were present in court at that time. I then made the following order,

***“A stay of execution is granted on condition that the entire decretal amount is deposited in an interest earning account to be opened and operated by both advocates”.***

Mr. Mutiso moved the court once more ex parte under a certificate of urgency.

The application was again heard by Hon. Justice Kuloba who granted an ex parte stay of execution order for 90 days.

At the expiry of the 90 days, Mr. Mutiso for the Judgment Creditor filed an application for variation of the terms of the stay order I issued on 20th June 2002. The application was to be heard on 3rd April 2003, Mr. Mutiso was not present but sent an advocate who asked for adjournment as Mr. Mutiso was in the Court of Appeal. I granted the adjournment because I considered the reason credible as I was given the

number of the Appeal he was arguing in the Court of Appeal.

The application for variation was subsequently amended to read, at para 3 (a),

***“That the Honourable court’s order of 20 th June 2002 be varied so as to omit the requirement that the defendant deposits the decretal sum in a joint interest earning account BUT instead do give directions on the stay of execution”.***

In court during the hearing of the application for variation of the terms of the stay of execution order, Mr. Mutiso submitted that the order requiring the defendant company to deposit the decretal sum would affect the operations of the company adversely. He submitted further that he has alternative security in the form of log books of various vehicles.

Mr. Majanja for the decree holder rejected this saying that non of the vehicles were in the defendant’s name.

I granted adjournment at my own instance to enable Mr. Mutiso to bring to court the valuations of the vehicles in question.

He brought such valuation at the next hearing of the application, however, only 3 copies of the logbooks were available in court, though valuations of 6 vehicles were given.

Though I was willing to vary the stay of execution order I made on 20th June 2002, I find that the Judgment Debtor has failed to provide sufficient security to enable the court to vary its earlier conditional order for stay. The Judgment Debtor told the court through Mr. Mutiso that he has filed an appeal in the Court of Appeal, however I do not find that that fact alone entitles him to an automatic order for stay of execution.

I therefore refuse to vary the order for stay of execution I granted on 20.6.2002. The application seeking to vary that order is hereby dismissed with costs to the Decree Holder.

Dated at Nairobi this 2nd day of October 2003.

**JOYCE ALUOCH**

**JUDGE**