



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL 49 OF 2002**

**KWA HOLA PHARMACY.....PLAINTIFF**

**=V E R S US=**

**COPY CAT COAST LTD.....DEFENDANT**

**R U L I N G**

The Applicant herein was the Respondent in the earlier application for stay. It was also the Decree Holder. This court in its wide discretion ruled that although the Applicant in that earlier application may not have merited a stay, it nevertheless could have a stay on condition that it deposited a sum of Kshs.50,000/- which fully covered the decretal amount. And now the Applicant herein argues that that order of this court was a mistake. Effectively what the Applicant herein is saying is that this court should not have allowed a stay even on terms as it did and that that is the mistake it should now review.

I have considered the arguments advanced from both Mr. Hassan and Mr. Munyaio for either party. I find that the order made to allow stay on condition that the Applicant deposited 50,000/- was proper order which was not made by mistake. It was an order made in the exercise of this court's wide discretion. The Applicant herein has not argued nor established that the order was not made judicially nor that the court did not consider or take into account facts and the law it should have taken into account.

Furthermore, the Applicant has failed to establish what important matters or evidence that was not before the court and could not be before the court then that has now been discovered.

Thirdly, the Applicant argues that the sum ordered to be deposited as security did not take into account possible costs of the appeal. It therefore argued that the order of stay should now be reviewed to include this element of possible costs.

It is the view of this court that this application does not establish the required grounds to be established for enabling a review of orders earlier made. Supposing the Applicant wishes to include a security for costs, there are adequate provisions in our Civil Procedure which can be invoked to enable this court to order for a security for costs. Such cannot and should not be made a ground for seeking a review.

Upon the above grounds, this court finds that this application is misconceived. This application is accordingly dismissed with costs to the Respondent/Judgment Debtor.

**Dated and delivered at Mombasa this 3rd day of June, 2002.**

**D. A. ONYANCHA**

**J U D G E**