



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CIVIL APPEAL NO. 109 OF 2002**

**PAN AFRICA BUILDERS  
& CONTRACTORS LTD. ....APPLICANT**

**VERSUS**

**WILFRED AMOS ALBERT .....RESPONDENT**

**RULING**

Counsel for the applicant has not demonstrated how the applicants will suffer substantial loss if they comply with the lower court order which required them to pay Kshs.50,000/= from the decretal amount to the respondent as a conditions for stay of execution there.

Just stating that if the applicants pay Kshs.50,000/= to the respondent they will suffer substantial loss is not sufficient.

Also, how does the applicant's counsel convince this court that if the appeal succeeds, the respondent is not the sort of litigant who will not refund the Kshs.50,000/=.

There must be facts and circumstances submitted before this court to back up the fear that the respondent has no means at all to refund the money if the appeal succeeds. None has been laid before the court.

The court does not need to be dictated to as to what condition or terms to impose in the exercise of its discretion in an application of this nature.

This application is dismissed with costs.

Delivered and dated this 29th day of July, 2002.

**D.K.S. AGANYANYA  
JUDGE**