



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**CIVIL CASE NO. 77 OF 2019**

**BETWEEN**

**CHARLES WESONGA MBINGI.....APPELLANT**

**AND**

**BERNARD ODHIAMBO OMUSI.....1ST RESPONDENT**

**(Being an Appeal from the Ruling and Order in Kisumu CMCC No. 86 of 2016**

**by Hon. J.Ngarngar (CM) on 19<sup>th</sup> June, 2019)**

**JUDGMENT**

1. On 27.10.18, the court fixed **Kisumu CMCC No. 86 of 2016** for granted a stay of execution on condition that the principal judgment sum of Kshs. 1,200,000/- be deposited in an interest earning account in the names of both advocates.
2. Contrary to the court order, the Appellant on 18.03.19 deposited a bank guarantee issued by National Bank for Kshs. 1,300,000/-.
3. Thereafter, the Appellant by an application dated and filed on 26. 03.19 sought the leave of court to file the said bank guarantee.
4. As at the time of seeking leave, the Appellant had long filed the bank guarantee without leave of court and in total breach of the court's order dated 27.10.18.
5. Consequently, I find that the trial court in its ruling dated 19.06.2019 rightly rejected the substitution of its order with a bank guarantee that was filed without an express order or leave to file.
6. Consequently, the appeal is disallowed with costs to the 1<sup>st</sup> Respondent.

**DATED AT KISUMU THIS 14<sup>th</sup> DAY OF October ,2020**

**T. W. CHERERE**

**JUDGE**

Court assistant - **Ms. Amondi**

**For Appellant - Mr. Mirembe for Ashioya & Co. Advocates**

For 1<sup>st</sup> Respondent - **Mr. Ochieng for P.Ochieng Ochieng & Co. Advocates** For 2<sup>nd</sup> Respondent - **State Law Office**