



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 264 OF 2008

JASON ONDABU T/A ANDABU & CO. ADVOCATES.....APPELLANT/APPLICANT.

VERSUS

DR. MOSES KINUTHIA.....RESPONDENT/RESPONDENT

RULING

The notice of motion dated the 10th January, 2017 has been brought under sections 1A, 1B, 3 and 3A of the Civil Procedure Act and all other enabling provisions of the law. It has sought the following orders;

1. That the Honourable Court do order for the release to the Appellant the sum of Kshs. 50,000/= which had been deposited as security for stay of execution pending the hearing and determination of the Appeal.
2. That the deposited amount be released to Jason Ondabu, Equity Bank Limited, Fourways Branch, Account No.020167212241, Nairobi.
3. That the costs of this application be in the cause.

The application is supported by the affidavit of Jason Ondabu sworn on the 10th January, 2017. The facts in support of the application as captured in the said affidavit are that; the appeal herein arose from the ruling of the Hon. A. Ileri (Mrs) in Milimani CMCC No. 6546 of 2007.

That as a condition for stay of execution pending appeal, the Appellant was ordered to deposit a sum of Kshs. 50,000/= as security which he deposited as ordered. The appeal was heard and in a judgment delivered on the 31st October, 2016, it was allowed.

That it is only fair and just that the said sum of Kshs. 50,000/= be released to the Appellant as the Respondent will not suffer any prejudice if the orders are granted.

The Respondent did not oppose the application. He did not even attend court when the application came up for hearing.

The court has considered the application and the affidavit in support. The appeal herein was allowed on the 31st day of October, 2016. The sum of Kshs. 50,000/= was being held as security pending the hearing and determination of the appeal.

In the premises, I find merit in the application dated 10th January, 2017 and the same is granted as prayed.
But with no orders as to costs.

Dated, Signed and Delivered at Nairobi this 23rd Day of February, 2017.

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L. NJUGUNA

JUDGE

In the Presence of

..... for the Appellant

..... for the Respondent