



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 661 OF 2005**

**KENYA WILDLIFE SERVICE..... APPELLANT**

**VERSUS**

**COLLINS ODERA.....RESPONDENT**

**RULING**

1. Pursuant to the provisions of Order 27 rule 9 of the Civil Procedure Rules, Collins Omondi Odera, the Respondent herein took out the motion dated 30<sup>th</sup> July 2015, in which he prayed for the following orders:

1. ***THAT the Decretal amount deposited in this Honourable Court on 24<sup>th</sup> January 2006 pursuant to the Court Order dated 29<sup>th</sup> September 2005 as security pending Appeal and amounting to Kenya shillings three hundred thousand (Kshs.300,000/=) be immediately released to the Respondent's counsel Messrs Joyce L. Oneko & Associates Advocates together with all accrued interest.***
2. ***THAT the costs of this application be awarded to the Respondent.***

2. The motion is supported by the affidavit of the Respondent. The motion was served upon the firm of Joyce L. Oneko & Associates, the Appellant's advocate but that service did not elicit any response to the Application. A hearing notice was also served upon the Appellant's advocates but none appeared in court during the interpartes hearing of the motion, hence the Respondent/applicant was granted leave to prosecute the motion exparte.

3. The main ground relied by the Respondent/Applicant in support of the motion is that since the appeal has now been dismissed, the money which had been deposited in court as a condition for stay pending appeal for the due performance of the decree, should be released to the Respondent. This assertion remains uncontroverted since the Appellant/Respondent did not deem it fit to file a response to the motion.

4. The background of the motion can be deduced from the record. The Respondent sued the Appellant and Kenya National Assurance C.o. Ltd before the Chief Magistrate's court, Milimani claiming for damages for the injuries he sustained as a result of the road traffic accident that occurred along Ongata Rongai Road on 29.1.1994. The Appellant had testified that motor registration no. KAB 139B belonging to the Appellant had hit him while lawfully walking along the aforesaid road. The Respondent was in the end awarded judgement in the sum of kshs.301,500/= on 30.08.2005. Being dissatisfied with the decision, the Appellant filed this appeal. The Appellant successfully applied and obtained an order for stay pending appeal on 29<sup>th</sup> September 2005. The order for stay of execution of the decree pending appeal was granted on condition that the appellant deposits a sum of kshs.300,000/= as security for the due performance of the decree. There is documentary evidence that cheque no. 018532 dated 21.9.2005 for kssh.300,000/= was deposited with the Registrar of this court. This appeal was dismissed for want of prosecution on 8<sup>th</sup> May 2014. The sum of sksh.300,000/= was deposited in court by the Appellant as security for the due performance of the decree. The appeal has now been lawfully determined. What remains is for the deposit to be released to the decree holder to satisfy the decree.

5. In the end, I find the motion to be well founded. It is allowed as prayed with costs to the Respondent.

Dated, Signed and Delivered in open court this 6<sup>th</sup> day of November, 2015.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

.....for the Respondent