

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS APPLICATION 7 OF 2011

**CENTRE FOR PEACE & DEMOCRACY BOARD OF DIRECTORS.....
.....APPLICANT**

VERSUS

**NON-GOVERNMENTAL ORGANIZATION CO-ORDINATION
BOARD.....RESPONDENT**

R U L I N G

In his application dated 12-3-2012 the applicant has prayed for stay of execution pending the hearing and determination of an appeal in Kisumu C.A No. 27 of 2011. The application is supported by the affidavit of **Michael Juma Otieno**.

The applicant is dissatisfied by a striking out order issued pursuant to a successful preliminary objection which was allowed on 28-9-2011. In allowing the preliminary objection the court granted the respondent the costs of the suit. The respondent did proceed to file his bill which was taxed at Kshs. 163,152.20/= by the taxing master on 14-5-2012.

The respondent has filed grounds of opposition dated 13-3-2012 arguing that the applicant has not met the prerequisites of grounds which could permit this court to grant stay of execution pending appeal. He prayed that the said application be allowed.

After careful consideration of this application, it is my opinion that an appeal is a fundamental principle in our statutes. No party should stand on the way of any appellant. The respondent nonetheless must be seen to enjoy the fruits of his success.

I shall therefore order that the applicant shall pay to the respondent half of the decretal sum of Kshs. 163,152.20/= and the balance be deposited in a joint interest earning account of both the counsels for the applicant and respondent. This be done within 30 days from the date of delivery of this ruling. Costs of this application to the respondent.

Dated, signed and delivered at Kisumu this 13th day of July, 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

.....for the applicant

.....for the respondent

HKC/va