



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**Civil Appeal 697 of 2008**

**SPIN KNIT LIMITED.....APPELLANT**

**VERSUS**

**JOSEPHINE NJERI KIMANI (suing for and on behalf of the Estate of**  
**STEPHEN KURIA KIMANI (Deceased).....1<sup>ST</sup> RESPONDENT**  
**REV. MOSES KINUTHIA WANJIKU.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. There are two applications which are pending before me. The first one was a Notice of Motion filed on 30<sup>th</sup> September, 2009 in which Josephine Njeri Kimani who is the 1<sup>st</sup> respondent to this appeal, sought to have the order of stay of execution issued on 29<sup>th</sup> May, 2009 set aside and/or discharged, and the 1<sup>st</sup> respondent allowed to execute the decree in CMCC No. 956 of 2003. The 1<sup>st</sup> respondent further sought an order for release of monies which were deposited in CFC Stanbic Bank Kenyatta Avenue Branch in the joint names of the parties advocates, released to the 1<sup>st</sup> respondent.
2. The second application is a Notice of Motion filed on 6<sup>th</sup> October, 2009 in which Spin Knit Limited, who is the appellant in this appeal, sought orders for enlargement of the period within which to serve the record of appeal, and further that the record of appeal attached to its application be filed and served out of time.
3. On the 6<sup>th</sup> October, 2009 it was directed that the two applications be heard together. In support of the 1<sup>st</sup> respondent's application, Mr. Gichachi maintained that the appellant had not complied with the conditions which were issued by this Court on 29<sup>th</sup> May, 2009 for the granting of an order of stay of execution. Mr. Gichachi maintained that the appellant had not given any good reasons for the failure to comply with the Court order.
4. Mr. Gichachi dismissed the appellant's application for extension of time contending that it was not brought in good faith but was only intended to counter the 1<sup>st</sup> respondent's application. He pointed out that the appellant only made an application for proceedings and judgment on 24<sup>th</sup> July, 2009, which was

two months after the Court order. The application for the decree was not made until September, 2009. Mr. Gichachi therefore maintained that the appellant is not interested in pursuing the appeal, but is only using it to delay the respondent from enjoying the fruits of his judgment.

5. For the appellant it was maintained that efforts had been made to comply with the conditions which were given by the Court, but that it was not possible to file the record of appeal within the period given by the Court, as the typed proceedings, judgment and decree were only received by the appellant from the Court on 10<sup>th</sup> September, 2009 after the period had expired. Counsel for the appellant also stated from the Bar, that his client was required to pay further Court fees of Kshs.38695/= before action could be taken in typing the proceedings.

6. I have given due consideration to the two applications. It is evident that the appellant has been rather lax in pursuing copies of the proceedings, judgment and decree of the lower Court. This has delayed the preparation of the record of appeal resulting in the appellant's failure to comply with the Court order of 29<sup>th</sup> May, 2009. That notwithstanding, the appellant has shown that it is still interested in pursuing this appeal. A copy of the record of appeal has already been prepared and same is annexed to the appellant's application. The decretal sum of Kshs.826,104/= was also deposited into an interest earning account in compliance with the Court order of 29<sup>th</sup> May, 2009.

7. I find that despite the delay in filing the record of appeal, the record of appeal is now ready and the 1<sup>st</sup> respondent will not suffer any further prejudice. Moreover, it is in the interest of substantial justice, that time be extended so that the appellant can properly file the record of appeal to facilitate the determination of the appeal on merit. Accordingly, I order that the appellant shall duly file and serve the record of appeal within 15 days from the date hereof. The appellant shall pay costs of both applications to the 1<sup>st</sup> respondent in any event.

**Dated and delivered this 6<sup>th</sup> day of November, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Kariuki holding brief for Gichachi for the appellant

Gicharu for the 1<sup>st</sup> respondent

Eric, court clerk