



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**(MILIMANI LAW COURTS)**

**CIVIL APPEAL 859 OF 2007**

**EDWARD MWANGI GAKURU.....APPELLANT**

**VERSUS**

**INSPECTOR GENERAL (CORPORATION).....RESPONDENT**

**R U L I N G**

1. By a notice of motion dated 16<sup>th</sup> February, 2009, Edward Mwangi Gakuru, the appellant herein seeks to have the order made on 9<sup>th</sup> February, 2009 reviewed. The orders sought to be reviewed granted the appellant a stay of execution of the judgment of the lower court pending the hearing and determination of his appeal in this court, on condition that he provides an appropriate bank guarantee for satisfaction of the decree for the sum of Kshs.1 million.

2. The appellant now pleads that due to poverty and unemployment he is unable to furnish the required bank guarantee. The appellant further contends that his former employer, Coffee Research foundation, is holding his terminal dues amounting to Kshs.839,519.50. He prays that the order made on 9<sup>th</sup> February, 2009, be reviewed to the extent of applying the sum of Kshs.839,519.50 being held by the Coffee Research foundation as security instead of the required 1 million.

3. The application is opposed through a replying affidavit sworn by Peter D. Ondiek the Inspector General of State Corporation. He depones that the application has been brought in bad faith simply to delay the legal process. It is contended that the Coffee Research Foundation is not a party to this proceeding. It is maintained that the appellant having failed to comply with the conditions imposed by the court, the order for stay of execution should be discharged.

4. I have carefully considered this application and the submissions made by the counsel. The appellant has availed evidence showing that the Coffee Research Foundation is holding certain monies arising out of the surcharge imposed by the Inspector of State Corporations. In the circumstances, I think it is fair and just that the court do review the order for security which was imposed on 9<sup>th</sup> February, 2009.

5. Accordingly, I grant the application and review the order as follows:

(i) I set aside the order for deposit of the bank guarantee of Kshs.1 million.

(ii) That the sum of Kshs.839,519.50 being held by the Coffee Research Foundation shall remain with the Coffee Research foundation until this appeal is heard and determined.

(iii) That the appellant shall either deposit a sum of Kshs.200,000/= into this court as further security or avail a bank guarantee for Kshs.200,000/= within 21 days from the date hereof.

(iv) The appellant shall serve a copy of this order on the Coffee Research Foundation.

Those shall be the orders of this court.

**Dated and delivered this 12<sup>th</sup> day of May, 2009**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Muli H/B for Muthama for the appellant

Advocate for the respondent absent

Erick – Court clerk



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