



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**Civil Appeal 98 of 2009**

This is a ruling on the Appellant's application dated 10<sup>th</sup> August 2009. It is brought under section 3A of the Civil Procedure Act, order XLI rule 4 (1) (2) of the Civil Procedure Act. It seeks for orders that warrants of arrest of the Appellant in Bungoma CM CC NO.211 of 2008 be suspended/stayed pending the hearing and determination of the appeal.

The grounds set out in the supporting affidavit are that the Applicant was condemned unheard for contempt of court which is against the principles of natural justice. The application for contempt was not served on the Applicant. It was not until 20/7/2009 when the counsel for the Applicant became aware that such warrants had been issued against his client.

The application is opposed on grounds that the Applicant disobeyed an injunctive order issued by the court and served on him. It is the Respondent's contention that the application for contempt of court was heard and fully determined and should not be revisited by this court when the Applicant is still in contempt.

The Applicant denies service of the application for contempt. In his replying affidavit, the Respondent does not address the issue of the disputed service. The

Respondent avers that the Applicant has tried to defeat the injunctive orders through the back door in other suits. However, no evidence of such suits has been annexed to the affidavit.

As the application stands, the allegation of failure to serve the Applicant with the application for contempt has not been denied. Any party alleged to be in contempt must be given an opportunity to show cause why he should not be punished for the contempt. In this case, the Applicant has shown he has a good ground to seek the order for stay and pending appeal.

I find the application merited and I allow it as prayed.

**F. N. MUCHEMI**

**JUDGE**

*Dated, Delivered and Signed at Bungoma*

*This 10<sup>TH</sup> day of December . 2009 in the presence of*

*Mr, Sichangi for respondent.*



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