



REPUBLIC OF KENYA



Mbiti v Ngure (Civil Appeal E003 of 2022) [2022] KEHC 12341 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 12341 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E003 OF 2022**

A. ONG'INJO, J

JUNE 23, 2022

BETWEEN

SAMUEL MBITI APPELLANT

AND

CLIVE MWAINO NGURE RESPONDENT

RULING

1. By an application dated 18th day of February 2022 brought pursuant to Section 3A of the *Civil Procedure Act* and Order 42 Rule 6(1) & Order 51 of the *Civil Procedure Rules* seeking for orders of slay of execution of the judgment entered in favour of the Respondents on 19th January 2022 in Voi CMCC No. 326 of 2018 pending hearing and determination of the application and appeal herein respectively.
2. The application was premised on the grounds on the face of the application and affidavit of Hadassah Rimunya Advocate sworn on 22nd February 2022. The Respondent opposed the application by the Replying Affidavit of Clwe Mwalimo Ngwre sworn on 4th March 2022. This application was canvassed by way of written submissions.
3. The Applicants submissions dated 4th April 2022 were filed on even date whereas the Respondent submissions were filed on 6th May 2022.
4. Having considered the application the Replying Affidavit in opposition and the submissions this court finds that the application for stay was filed without unreasonable delay.
5. The applicant also addressed the court on the issue of substantial loss to the effect that if the decretal sums were paid out to the Respondent he would not be able to refund the same in event the appeal succeeded as he was a man of straw.
6. The Respondent was supposed to controvert this claim that he was a man of straw incapable of refunding the decretal sums. At paragraph 8 of his Replying Affidavit he avers that the applicant was



the one to demonstrate his capacity to refund but it is this court's opinion he was the one to show to court what his earnings are and how he would refund the decretal sums.

7. The applicant also offered security at paragraph 9 of his grounds and paragraph 12 of his affidavit. Thus all the ingredients required to grant orders of stay of execution has been satisfied. This court therefore grants orders for stay of execution on the following terms:-
- a. The Applicant to pay Kshs.429388/= to the advocate of the Respondent within 21 days for onward transmission to the Respondent/Decree holder herein.
 - b. The Applicant & Respondent's advocate to open a joint earning interest account in their names within 21 days and deposit the balance of the decretal sums.
 - c. The costs of the application herein to the Respondent to be taxed and paid upon hearing and determination of appeal.
 - d. In the event that any of the conditions no (1) & (2) are not complied with execution to issue without recourse to the court.

DATED, SIGNED AND DELIVERED AT MOMBASA IN OPEN COURT/ONLINE BY MS TEAMS, THIS 23RD DAY OF JUNE 2022.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Mr. Ratemo Advocate for Respondent

Ms. Kithony Advocate for Applicant/Appellant

HON. LADY JUSTICE A. ONG'INJO

JUDGE

