



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 553 OF 2003**

**STAN MUSYOKA MANTHI.....APPELLANT/RESPONDENT**

**VERSUS**

**AMINA ABDI.....RESPONDENT/APPLICANT**

**RULING**

The appellant filed an appeal against the lower court judgment which was however dismissed on 29<sup>th</sup> September, 2016. Before the hearing of the appeal orders had been made for the appellant to post security for any decree that may be issued against him in favour of the respondent. In compliance with the said order the appellant deposited a sum of Kshs. 50,000/= in addition to the log book in respect of motor vehicle registration No. KAA 298H and the title deeds relating to Makueni/Nguu Ranch/594 and Makueni/Nguu Ranch/596.

The appeal having been dismissed, the respondent has moved the court by way of Notice of Motion dated 7<sup>th</sup> July, 2020 for orders that the sum of Kshs. 50,000/= be released to Maalim Mohamed Abdi and Mohamed Abdi being the administrators of the estate of Amina Abdi now deceased or their advocates on record.

There is also a prayer that the Deputy Registrar be authorised to execute the transfer forms of the said motor vehicle to the administrators and the original log book be released to the administrators or their advocates. There is also a prayer that the Deputy Registrar executes the transfer forms of the cited parcels of land to the administrators and that the original title deeds be released to the administrators or their advocates.

The application is supported by grounds set out on the face of the application and the supporting affidavit sworn by Mohamed Abdi, one of the administrators of the late Amina Abdi. The application is opposed and there is a replying affidavit sworn by the appellant. Mohamed Abdi then filed a further affidavit in reply to the appellant's affidavit. Both parties have filed submissions and cited some authorities.

There is no prejudice that has been shown shall be occasioned to the appellant if the administrators of Amina Abdi are allowed to take the position of the respondent now deceased. I say because in the replying affidavit the appellant concedes that the Kshs. 50,000/= may be released to the applicants. In that regard therefore, since there is concession for that release, the order is hereby issued that Kshs. 50,000/= be released to the applicants.

The dismissal of the appeal reverted the proceedings to the trial court which issued the decree. The High Court in this appeal is not the executing court and no decree has been drawn arising from the appeal. It follows therefore that the execution process should be carried out by the lower court.

The foregoing notwithstanding, the motor vehicle and the parcels of land may not be transferred to the applicants in the manner suggested. This is because they were only deposited as security and had no relationship whatsoever with the pleadings in the lower court. There is also no proclamation, attachment or sale of the properties to warrant the order sought by the applicants. The respondent is correct to say that the deposit of security does not vest title or ownership to the decree holder.

At the same time, there is no evidence that the respondent has refused to settle the decree. Whatever the case, other than the release of Kshs. 50,000/= to the applicants the order that commends itself is that the original file shall now be returned to the lower court for appropriate action. There is no order as to costs.

Dated, Signed and Delivered at Nairobi this 22<sup>nd</sup> day of April, 2021.

**A. MBOGHOLI MSAGHA**

**JUDGE**

In the presence of:

Ms. Mwanja for Appellant/Respondent

Ms. Musebe h/b Mr. Moibi for the Respondent/Applicant