

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. E009 OF 2021

SAMWEL NDUNGU KARANJA.....PLAINTIFF/RESPONDENT

VERSUS

MAURICE OMAMO ANYANDA.....DEFENDANT/APPLICANT

RULING

1. The Notice of Motion by the applicant dated 8th April 2021 seeks among others orders of stay of execution pending the hearing and determination of the application as well as orders to be allowed to pay the decretal amount by instalments.
2. The application is supported by the affidavit of one **Esther Wairimu** the legal officer of the insurance company which had insured the applicant. There are other grounds which are attached to the said application for instance the fact that it had made an offer to pay the amount by instalments which offer was rejected by the respondent.
3. The respondent has filed a replying affidavit dated 19th April 2021 in which he has prayed that the application ought to be disallowed for the simple reason that the applicant had made a similar application before the trial court and it was dismissed.
4. This court would not want to dwell on the application on merit for the reason that the same is not premised on any suit. It has no legs to stand. The suit herein is not a suit. There is no plaint. It is not even an appeal. It is not a miscellaneous application. It is not an originating summons. It is not a petition. It is a farce.
5. The parties litigated over suit **No. Engineer SPMCC No 56 of 2019**. That is what is contained in the annexures. There is no appeal before this court. Consequently, this court cannot do much to the applicant. The earlier orders issued Exparte and electronically was based on the assumption that the suit was in existence. It was not.
6. For the above reasons, the application and this suit is hereby dismissed with costs to the respondent. The earlier orders are hereby vacated.

Dated signed and delivered via video call at Nakuru this 23rd day of June 2021.

H K CHEMITEI

JUDGE