

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. E237 OF 2018

FRANCIS NJOROGE WANJOHI.....APPELLANT/PLAINTIFF

VERSUS

JOSEPH NGETHE IKURO.....RESPONDENT

RULING

1. The Application dated 26th July, 2021 seeks orders that **pending the hearing and determination of this application this honourable court review its orders of 24th June, 2021 in terms of timelines set for compliance and abridge an extension of 40 days for compliance.**

2. Secondly, **that this honourable court be pleased to substitute security for deposit of the balance of the decretal sum with a deposit for title documents with respect to two parcels of Land known as Ruiru/Ruiru East Block 3/4001 & 4002.**

3. It is stated in the grounds and the affidavit in support of the application that the Applicant is not able to deposit the decretal sum of Ksh.1,200,000/= as ordered herein. That the Applicant has a medical condition that has drained his finances but he is ready and willing to deposit the Title Deed to his parcel of land Ruiru/Ruiru East Block 3/4001 and his daughters plot Ruiru/Ruiru East Block 3/4002 which in total have a value of Ksh.2,000,000/= .

4. The application is opposed. It is stated that the application is an afterthought and meant to delay the Applicants from enjoying the fruits of the judgment. It is stated that the Applicant is a retired high school teacher who is earning a pension and living a posh life in Karen and has rental houses in Ngong, Kileleshwa, Wangige and Nairobi. That the Applicant's children have money and can assist him together with the extended family.

5. It is further averred that the Applicant has a history of disobedience of court orders. That the application is not brought in good faith and the same ought to be dismissed.

6. The Applicant filed a supplementary affidavit and disputed ever having been a high School teacher. He stated that he was once a primary school teacher before he resigned and ventured into the matatu business which also collapsed. That he once resided in Karen but is currently living in a rental houses in Ngong. He denied having children who are capable of supporting him financially. He denied that he owns any rental houses. He further stated that the Respondent's fears are unfounded.

7. The Respondent filed a further affidavit. It is stated that the Applicant lives in his own residential house in Ngong, runs a matatu business and has a Mitsubishi pajero motor vehicle registration No. KBQ 918 and a Range Rover Registration No. KBX 284U and a Toyota Prado registration No. KBN 048P and also has children who are capable of assisting him. That the Applicant is not a man of integrity and he is capable of interfering with the Title Deeds offered as security as witnessed in other previous tussles.

8. I have considered the application and the responses thereof. The parties have made allegations and counter allegations against each other. Some of the allegation go beyond the scope of the application herein. It is however noteworthy that no new matters have been brought out in the new application to warrant a change of the conditional orders of stay of execution issued herein. It is noted that during the hearing of the application for stay of execution the Applicant had stated that he was capable of paying the decretal sum. The issue of the Applicant's illness was also raised during the hearing of the application for stay of execution. The Applicant can now not turn around once the stay of execution orders have been granted. I find no merits in the application and the same is hereby dismissed with costs. The deposit to be made not later than 14 days from the date hereof.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF NOV., 2021

B. THURANIRA JADEN

JUDGE