

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 12 OF 2012

(An appeal arising from the judgement and decree of Hon. S. N Abuya,

Senior Resident Magistrate, of 19th December 2011,

in Butali SRMCCC No. 116 of 2009)

KISHORE BHANDERI t/a CHETAMBE JAGGERY.....APPELLANT

VERSUS

SAMSON NAMASAKA JUMA.....RESPONDENT

RULING

1. The application for determination is the Motion dated 30th November 2019. It principally seeks stay of execution of the decree that was allegedly issued herein, pending an appeal that the appellant has lodged at the Court of Appeal, in Kisumu CACA No. 246 of 2019.
2. The decree whose execution is sought to be stayed was that issued by the Deputy Registrar of this court on 25th October 2019, extracted from a judgement that I delivered herein on 8th February 2019, where I affirmed the decision of the trial court and dismissed the appeal. The decree of this court, therefore, is to the effect that the appeal was dismissed.
3. Is such a decree, merely dismissing an appeal or suit, capable of execution? I do not think so. No action, by way of execution or implementation, can be taken on an order of dismissal of an appeal or a suit. Such a determination is merely declaratory. It merely declares a position. In this case, the position declared was that the decision of the trial court was proper and the appellate court was not going to disturb it, with the consequence that the appeal was dismissed. No execution could flow from such a determination.
4. This court did not disturb the decree of the trial court in Butali SRMCCC No. 116 of 2009. It left it intact. It did not replace it with its own decree, which could then be executed by the respondent against the appellant. The decree that is capable of execution remains that of the trial court, and that is the decree whose execution the appellant should be seeking to stay.
5. Without more, it is my conclusion that the Motion, dated 30th November 2019, is bereft of merit, and I hereby dismiss the same with costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2020

W. MUSYOKA

JUDGE