

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 358 OF 2014

FRED ONYONYI NYABUTO.....PLAINTIFF

VERSUS

KIMANI WALTER Alias WALTER NGUGI KIMANI.....DEFENDANT

RULING

1. The application dated 15th October, 2019 principally seeks orders that the Applicant be allowed to execute the principal amount to enable him urgently access the same to assist him proceed abroad for advanced specialized medical treatment and management in good time.
2. Secondly that costs await the outcome of taxation slated for 11th February, 2020.
3. It is stated that the grounds and the affidavit in support of the application that the Applicant is paraplegic and in dire need of specialized medical treatment and management abroad. That the Applicant requires to access the fruits of his judgment for the purposes of the said medical treatment and management. It is further averred that the date for the taxation of the costs herein is far off, hence the second prayer herein.
4. The application is opposed. It is stated in the replying affidavit that no sufficient reasons have been disclosed for the application to be allowed. That the Notice of Appeal has been filed by the Respondent and that a similar application has been filed before the Court of Appeal. The Respondent's stand is that the application herein is meant to frustrate his Appeal.
5. The parties agreed to canvass the application by way of written submissions. The Applicant filed his but the Respondent did not file any.
6. I have considered the application, the response to the same and the submissions filed.
7. The uncontroverted evidence from the Respondent is that they have filed an Appeal against the judgment herein. The Notice of Appeal has been exhibited herein. It is also apparent that the Applicant herein has filed an application before the court of Appeal seeking orders that the Notice of Appeal be struck out. Given, the matters before the Court of Appeal can go either way.
8. Without lack of empathy for the Applicant herein, this court's view is that the release of the principal sum herein will render the Appeal an academic exercise. Consequently, this court will await the decision of the court of Appeal. The application is therefore dismissed with costs in cause.

Dated, signed and delivered in Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE