



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CIVIL APPEAL NO. 18 OF 2019

MICHAEL MWANGI GUCHURA.....APPELLANT

VERSUS

MARTIN WAMBUA KITAVI.....RESPONDENT

RULING NO. 2

1. The respondent seeks *temporary release* of the lower court file to enable him execute the decree. He avers that that he cannot reap the fruits of his judgment yet there is no stay.
2. Those matters are pleaded in a notice of motion dated 9th December 2019 and the annexed deposition sworn by his counsel on even date.
3. The application is contested by the appellant. There are grounds of opposition dated 14th July 2020; and, a replying affidavit sworn on 20th January 2020.
4. The respondent argues that the more just course would be to determine the appeal on the merits instead of moving the lower court file back and forth. He contends that his appeal raises serious grounds which will be defeated by the hurried execution. He further deposes that the Policyholders Compensation Fund has extended the declaration of moratorium of payments by his insurer, United Insurance Company Limited (annexture *MM1*).
5. On 21st July 2020, I heard brief submissions from learned counsel for both parties.
6. The respondent is the legal representative of *Kambua Kitavi* (deceased) who perished in a road traffic accident on 24th September 2003. On 25th May 2005, the lower court awarded the estate Kshs 536,025 in damages plus costs and interest.
7. The appellant's motion for stay of execution pending appeal was dismissed by the High Court in a ruling delivered on 8th October 2019. As far as I can tell from the record, the appellant has neither filed an appeal nor sought any review of that order.
8. The respondent cannot obviously execute the decree because the original lower court file is before this court. True, the main appeal is arguable and remains unheard. But in the absence of a stay, there would be no valid reason to bar the respondent from executing the decree. Paraphrased, it would allow the appellant to continue to enjoy a fictitious reprieve.
9. In the end I direct the Deputy Registrar to *temporarily* release the lower court file to the court below for purposes of execution of the decree.
10. I make no order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 24th day of September 2020.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

No appearance by counsel for the appellant.

No appearance by counsel for the respondent.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.