

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO. 20 OF 2020

EDWARD BWISA.....1ST APPELLANT

ELIZABETH WABULE BWISA.....2ND APPELLANT

VERSES

CHRISTINE NAFULA.....RESPONDENT

RULING

1. The Applicants pray that there be stay of execution of the Lower Courts Decree and judgement issued on the 17th February 2020 pending the determination of this application and thereafter the main appeal.
2. In their grounds on the face of the application the Applicants aver that they are filing this matter for the reasons basically that their Insurance Company AMACO ASSURANCE CO. has failed to settle the decree. That the mistake of their insurers should not be visited upon them.
3. The Supporting Affidavit of the 1st Applicant sworn on the 23rd September 2020 states as much including the chronology of his involvement with the Insurance Company. He says that as a result of that his goods have already been proclaimed and are at risk of being attached for sale. He prayed therefore that the application be allowed.
4. The respondent vide her Replying Affidavit dated 16th October 2020 has opposed the application on the grounds that the Applicants issue with their insurers cannot be visited on them. That they have waited for the last two years to enjoy the fruit of their judgement. She prayed that the application be disallowed.
5. The provisions of Order 42 rule 6 of the Civil Procedure Rules are clear on the grounds to be considered before allowing such an application.
6. The issue is whether the Appellants /Applicants shall suffer irreparable loss should the application be issued and whether the intended appeal shall be rendered nugatory.
7. It is apparent that the issue has got nothing to do with the Respondent. This is merely a dispute between the Applicants and their insurers. Whether they delivered the summonses to them is an issue they need to litigate. The trial court found them blameworthy and awarded the Respondent a sum of Kshs. 155,550 plus costs. They are therefore bound to settle the decree and pursue their insurers.
8. For the foregoing reasons, this application is unmeritorious and the same is therefore dismissed with costs to the Respondent.
9. The court shall however grant the Applicants to settle the decretal amount within the next 45 days from the date herein and in default the respondent be at liberty to execute.

Dated, Signed and Delivered at Kitale this 29th day of October 2020.

H. K. CHEMITEI

JUDGE

29/10/2020