

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 653 OF 1996

KENYA BROADCASTING CORPORATION.....PLAINTIFF

VERSUS

PAU MBURU MUTHUMBI.....DEFENDANT

RULING

There is before me an application by way of Notice of Motion dated 31st October, and filed on 8th November, 2018 for the release of Kshs. 800,000/= deposited in court on 16th November, 2014 following an application by the judgment debtor for stay of execution. The said sum of money was supposed to have been deposited within 21 days from 17th October, 2011 but this was not done until 11th November, 2011 when the judgment debtor sought extension to do so which was allowed.

From that time, the respondent has never prosecuted the appeal and for the last 8 years nor has he paid the judgment creditor the full decretal sum. It is on those reasons that this application has been made.

There is a supporting affidavit sworn by the advocate for the decree holder to which there is a reply by the advocate for the respondent. There is no allegation that the original file was ever misplaced. It is the respondent's position that the court has never provided typed and certified copies of the proceedings and judgment that are required to lodge the appeal.

I have perused the court file and I have not seen any application whatsoever lodged by the respondent for proceedings to be provided to facilitate the filing of the record of appeal. There is no justification whatsoever why the respondent has not made any effort to file the appeal within the required time. Litigation must come to an end and to have this matter on the record from 1996 to date, flies on the face of the court's efforts to expeditiously determine the matters that are brought before them.

The laxity on the part of the respondent cannot be justified by any means whatsoever. Whereas I agree that the funds are safe and should await the determination of the appeal, there is no appeal that has been filed so far. Although the respondent says that a notice of appeal and a letter requesting for proceedings were filed, no copies whatsoever have been provided to show that position.

I am unable to find any reason that can justify the resistance of the judgment creditor's application as prayed. I find that the application meritorious therefore allow the same with costs to the judgment creditor.

Dated, signed and delivered at Nairobi this 30th Day of April, 2019.

A. MBOGHOLI MSAGHA

JUDGE