



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**CIVIL APPEAL NO. 24 OF 2018**

**JOHN MBURU GACHAU.....APPELLANT**

**-VERSUS-**

**LAWRENCE KIMANTHI KAWELU.....RESPONDENT**

**RULING**

1. By a ruling dated 28/09/2018 this court held that;

***“The Respondent has demonstrated that he is a man of means and can easily refund the decretal amount should the appeal succeed.”***

2. Thus the court dismissed Application for stay of execution sought by the Respondent herein.

3. The Applicant thus went in full throttle to recover the decretal amount.

4. This prompted the Respondent to deposit Kshs. 583,1654/= in court on 09/11/2018 to forestall execution.

5. This has prompted the Applicant to lodge Notice of Motion dated 16/11/2018 seeking orders that Kshs. 583,165/= deposited in court to be released.

6. The Application is supported by the Affidavit of Faith Mutio Mutuku sworn on 16/11/2018 and the grounds on the face of the motion.

7. The Respondent has opposed the Application via Affidavit sworn by Agnes Wangari Gichohi sworn on 16/11/2018.

8. The Respondent contention is that by virtue of depositing the money in court, the decree is satisfied and that if same is withdrawn it may never be recovered in event appeal succeeds.

9. The court considered all the above arguments in a Ruling of 28/09/2018 and found no merit.

10. The Respondent never challenged aforesaid Ruling in the higher court but opted to keep money in court. That could only be done with court authority to enable same to forestall recovery of the decretal amount.

21. The court thus finds merit in the Application and thus makes the following orders:-

***1. The Kshs. 583,165/= deposited in CC No. 150/2014 Makueni SPM’s court to be released forthwith to the Applicant.***

***2. The Respondent to pay costs for the Application assessed at Kshs. 5,000/= within 7 days in default execution to issue.***

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKUENI THIS 31<sup>ST</sup> DAY OF MAY, 2019.**

.....

**C. KARIUKI**

JUDGE