

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

(Coram: Odunga, J)

MISCELLANEOUS APPLICATION NO. 354 OF 2018

MAINA NJUGUNA & ASSOCIATES.....APPLICANT

VERSUS

INVESCO ASSURANCE CO. LTD.....JUDGEMENT DEBTOR/RESPONDENT

AND

CO-OPERATIVE BANK OF KENYA.....1ST GARNISHEE

DIAMOND TRUST BANK OF KENYA LIMITED.....2ND GARNISHEE

RULING

1. On 1st August, 2019, the Deputy Registrar of this Court, **Hon. K Kenei**, pursuant to the provisions of Order 49 of the ***Civil Procedure Rules*** delivered a ruling herein in which she made the garnishee order nisi in respect of Kshs 3,378,433/= held to the credit of the Judgement Debtor herein absolute.
2. By an application dated 18th August, 2019, the Judgement Debtor herein has moved this court seeking that pending its intended appeal against the said decision, there be a stay of execution of the said decision.
3. Order 43 rule 1 of the ***Civil Procedure Rules*** prescribes for decisions against which an appeal lies as of right and Order 49 is not one of the orders specified therein. Accordingly, pursuant to Order 43 rule 2 of the ***Civil Procedure Rules***, an appeal arising from an order made under Order 49 only lies with leave of the Court. In this case, there is no leave to appeal sought nor is there any indication that the Judgement Debtor intends to apply for the same. Without leave to appeal being sought and granted, there would be no appeal and without an appeal, a stay cannot be granted. This was the position of the Court of Appeal in **David Kiberia & Another vs. Meru Central Co-Operative Union Ltd. & Another Civil Application No. Nai. 284 of 1999** where it held that where leave to appeal is required but has not been obtained a stay of execution ought not to be granted
4. It is therefore clear that the Judgement Debtor/Applicant herein has, in this application, put the cart before the horse.
5. In the premises the application dated 18th August, 2019 is misconceived and is hereby struck out with costs to the Respondent in the said application.
6. It is so ordered.

Read, signed and delivered in open court at Machakos this 16th day of August, 2019.

G V ODUNGA

JUDGE

Delivered in the absence of parties.

CA Josephine