

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 554 OF 2017

FLORENCE WANGARI MUTISO.....APPLICANT

VERSUS

EMMY MATISA SILAYI.....RESPONDENT

RULING

1. The application dated 6th June, 2018 seeks orders that there be a stay of execution of the judgment and decree of the honourable court in CMCC No. 7649 of 2014 Emmy Masitsa Silayi v Florence Wangari Mutiso pending the hearing and determination of the Appeal.

2. The application is premised on the grounds therein and two affidavits sworn by the Applicant, Florence Wangari Mutiso. The gist of the application is that the Applicant is dissatisfied with the judgment of the lower court and has appealed herein. That the Respondent has commenced execution proceedings of the monetary decree herein. It is contended that the Appeal which has high chances of success will be rendered nugatory. The delay in the filing of the instant application is stated to be due to the matter still being active in the lower court. The Applicant is ready to abide by the terms and conditions given by the court for deposit of security.

3. In opposition to the application, the Respondent filed a replying affidavit. It is stated that the application at hand was filed after inordinate delay of 8 months and that the application is therefore an afterthought. That the substantial loss to be suffered has not been demonstrated and that the execution process is lawful. It is contended that if the application is allowed the Applicant should be ordered to deposit the decretal sum in court.

4. The application was disposed of by way of written submissions which I have considered.

5. In an execution for stay of execution, Order 42 rule 6 (2) of the Civil Procedure Rules, 2010 provides as follows:

“No order for stay of execution shall be made under sub-rule (1) unless –

The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The delay in filing the application has been explained to the satisfaction of the court. The Applicant is willing to furnish security for the due performance of the decree. The Applicant has a right of appeal which appeal stands to be rendered nugatory.

7. To balance the competing interests of the parties, I allow the application on condition that the decretal sum is deposited in a joint interest earning bank account of the counsels for the parties or in court within 30 days from the date hereof. Costs in cause.

Date, signed and delivered at Nairobi this 24th day of Oct., 2019

B. THURANIRA JADEN

JUDGE