



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO.74 OF 2019

NGAO CREDITR LIMITED.....APPELLANT

VERSUS

STEPHEN MURUNGA MWANGI..... 1ST RESPONDENT

RONALD NAMISI KARANI.....2ND RESPONDENT

RULING

1. This is a ruling on **application** dated **23rd April 2019** filed by the Appellant seeking **stay of execution** of judgment delivered by **Hon. J. B. Kalo** on **26th March 2019** in **Nakuru CMCC No.82 of 2018 Stephen Murunga Mwangi Vs Ronald Naminsi Karani** pending hearing and determination of this appeal.
2. Grounds on the face of the application are that there is high and probable likelihood that execution will issue any time in the absence of stay and the applicant stand to suffer irreparable loss as the respondents would be unable to pay back the appellant part of the judgment sum if the appeal succeed; That no prejudice will occasioned to the respondents if orders sought are granted.
3. That the appellant is ready and willing to comply with any directions issued by the court and further to provide security for the performance of the decree; that if orders sought are not granted the appeal will be rendered nugatory.
4. That the appellant has lodged the appeal and filed application expeditiously, will further file record of appeal with certified copy of decree, and certified proceedings within the period that honorable court may order.
5. The application is supported by **affidavit** sworn by **Lydia Bosibori Nyaanga** sworn on **23rd April 2019**. She restated ground of appeal.
6. In response, the respondents filed **replying affidavit** sworn by **Stephen Murunga Mwangi** the 1st respondent herein. He averred that the application herein is misconceived, incompetent and bad in law; that the same lack merit and should be dismissed with costs.
7. First Respondent averred that the applicant has not established any sufficient ground to warrant granting of stay orders; that the applicant failed to demonstrate substantial loss it will suffer if orders sought are not granted.
8. He further submitted that the applicant has blatantly refused to comply with the judgment of the trial court requiring it to release the motor vehicle of the 1st respondent.
9. He averred that he is an Advocate of the High Court of Kenya practicing law in the name **Stephen Murunga Mwangi & Associates** and is not a man of straw as the applicant would want the court to believe.
10. 1st respondent averred that he purchased the motor vehicle at **Kenjap Motors Limited** after full payment it was transferred to him. That it is not true that the 1st respondent would be unable to pay an award of kshs.1,125,000 and in any event if the appeal succeed the 1st respondent will be willing to liquidate his said motor vehicle and pay back the amount.
11. 1st respondent prayed that the applicant be ordered to release the motor vehicle to the 1st respondent within 14 days and deposit original copy of logbook in court.
12. 1st respondent averred that as condition for stay the applicant be ordered to release decretal amount to the 1st respondent and if appeal is successful he will be willing to release the vehicle to the applicant.

13. In the further replying affidavit, he attached certificate of search to confirm that motor vehicle registration number KCK 684N is still registered in his name; further that he is also the registered owner of motor vehicles registration number KCK 923Q and KCK 284X and their value to confirm that he is a man of means and that he will be able to indemnify the defendant in the unlikely event that the appeal succeed. He urged court to reject allegation imminent substantial loss.

14. 1st respondent averred that the applicant has failed to comply with court order to release motor vehicle registration number KBK 596K and is not therefore deserving of equitable remedy sought.

15. 1st respondent averred that by show of good faith upon release of the said vehicle, he undertakes not to dispose of it until the appeal is heard and determined.

16. Parties herein agreed to prosecute the application by way of written submissions. I have perused and considered submissions filed.

ANALYSIS AND DETERMINATION

17. On prayer to have the vehicle herein released to the respondent I note that in the judgment delivered on 28th March 2019, the trial magistrate declared the 1st respondent as the lawful and beneficial owner of the vehicle herein. He ordered release of the vehicle to the 1st defendant and transfer to his name upon payment of requisite fee. In the ruling attached to the supplementary affidavit filed, delivered on 3rd June 2018, the trial magistrate dismissed the application which sought to restrain the applicants from selling or transferring the vehicle. He found that damages would be adequate compensation as the value was known; that it was valued at ksh460,000. Though the 1st respondent has filed search to prove the vehicle is still in his name, I find that it would not be appropriate to make the order at this stage.

18. On prayer for stay pending appeal, I would not want to make any comments concerning chances of appeal to succeed.

19. On 1st respondent ability to refund decretal amount in the event the appeal succeed, he has committed himself to dispose of the vehicle herein to refund decretal amount. The vehicle has not been released to him though according to a copy of record attached to the further affidavit, it is still registered in his name. The issue of release will be subject of appeal as shown by memorandum of appeal filed. From the ruling delivered by trial magistrate the vehicle was valued at ksh460, 000.00. 1st respondent has also availed record to show that he owns two other vehicles whose value exceed the decretal amount.

20. Even though the 1st respondent has shown that he owns property, which he can disposed of to pay the decretal amount; it is difficult to tell how long it will take to dispose of the property. I find it appropriate to order that the decretal amount be deposited in an interest earning account in the names of both counsels herein.

21. FINAL ORDERS

- 1. Stay of execution do issue on condition that the decretal amount is deposited in an interest earning account in the names of both Advocates herein.**
- 2. Deposit to be done within 30 days from today's date.**
- 3. Costs to abide by the outcome of the appeal.**
- 4. Failure to comply with order 1 and 2 above execution to proceed.**

Ruling dated, signed and delivered at Nakuru this 28th day of November, 2019.

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:-

Schola/Jenifer - Court Assistant

M/s. Kamera holding brief for Muindi Counsel for Applicant

No appearance for Counsel for Respondent