



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO.126 OF 2002**

**MRS MARY WAMBUI CHEGE.....PLAINTIFF**

**VERSUS**

**PETER KIMOTHO CHEGE.....DEFENDANT**

**R U L I N G**

This court delivered a judgment on 15<sup>th</sup> July, 2015 relating to this protracted litigation between the parties. In that judgment the court revoked a transfer deed of five ordinary shares in the company known as Chehe holdings limited and reinstated the plaintiff as shareholder and director of the suit company. The defendant was aggrieved by that order and filed a notice of appeal dated 27<sup>th</sup> July, 2015. There was also an application made for typed proceedings to facilitate the preparation of the record of appeal.

The proceedings are part of this file but there is no indication whether or not the record of appeal has been filed in the Court of Appeal. There is now before me an application by way of Notice of Motion dated 30<sup>th</sup> and filed on 31<sup>st</sup> July, 2019 seeking orders that there be a stay of execution of the decree arising from the judgment of this court, and that the plaintiff be restrained from transferring, pledging, charging, disposing or in any other way dealing with the five shares aforesaid.

Further that the plaintiff be restrained from passing any resolution relating to the allotment of further shares in the said company or transfer the existing shares without the sanction of the court. There is a further order sought by the defendant that the management of two houses erected on LR No. 2464/1 Masaba Road Nairobi and relating to the said five ordinary shares in the company be undertaken jointly by the advocates for the parties herein, and rent payable be paid into a bank account to be operated in the joint names of the said advocates.

The application is opposed and there is a replying affidavit sworn by the plaintiff. Both advocates have also filed their submissions which I have considered. The application is brought under order 42 Rule 6 (1) Order 51 Rule 6 (1) of the civil Procedure Rules and Section 3A of the Civil Procedure Act. The defendant was supposed to demonstrate that the application was filed timeously and that substantial loss may result if the order is not granted. There is a requirement also that the court may order provision of security to be provided to satisfy any decree that may be issued against the applicant in the event the appeal fails. This application comes five years from the date of the judgment delivered on 15<sup>th</sup> July, 2015. By any standards, the delay in filing that a application is inordinate and an explanation was required from the defendant if the delay were to be excused.

The defendant did not need the court proceedings to file this application. Both in the grounds set out on the face of the application and the supportive affidavit blame is attributed to the delay in supplying the said proceedings. As I have said that is not sufficient reason. In my finding the delay is inordinate and inexcusable.

More importantly however, the decree sought to be stayed has been executed in terms of the judgment of the court. The plaintiff has been reinstated as a director and taken possession of the properties said to be at the centre of the dispute. The defendant has resorted to speculation in relation to his apprehension of the plaintiff's position. There is no overt act that the plaintiff has done to warrant the concern raised by the defendant. I have already observed that the proceedings relating to this case are in the court file yet no record of appeal has been filed.

On whether or not any substantial loss has been demonstrated, the defendant has fallen short of that requirement. I am unable to allow the application on the grounds advanced by the defendant/applicant. The end result is that this application is dismissed but each party shall bear their own costs.

***Dated, signed and delivered at Nairobi this 19<sup>th</sup> Day of December, 2019.***

**A. MBOGHOLI MSAGHA**

**JUDGE**