

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 505 OF 2010

STEPHEN NDIRANGU KINYANJUI....APPELLANT/APPLICANT

VERSUS

ESTHER NJAMBI KINUTHIA.....RESPONDENT

RULING

On 15th June, 2016 this court delivered a judgment on an appeal filed by the appellant. There is now an application before me for stay of execution pending hearing and determination of yet another appeal, this time to the Court of Appeal. The application which is dated 29th June, 2016 is under Order 22 rule 1, Order 42 rule 6 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The grounds are set out and there is a supporting affidavit by the appellant. A notice of appeal has already been lodged.

The application is opposed and there is a replying affidavit sworn by the respondent. Both parties have filed their submissions. At some stage parties indicated there was a possibility of a settlement. This however did not come to pass. The application was filed timeously. The subject matter is immovable property constructed on a piece of land in dispute.

I have taken into consideration the fact that the appellant has the right of appeal and at the same time the respondent has a judgment in her favour.

The order that commends itself in the circumstance is that there shall be a stay of execution on condition that all rental proceeds from the leased premises shall be deposited in an interest earning joint account in the names of both advocates for the parties, pending the hearing and determination of the appeal. This account shall be opened within 14 days from the date of this application and take effect from 30th April, 2018.

The costs of this application shall be on appeal.

Dated, signed and delivered at Nairobi this 20th Day of March, 2018.

A. MBOGHOLI MSAGHA

JUDGE