



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AY KITALE

CIVIL APPEAL NO. 3 OF 2018

(Being an appeal arising from conviction and sentence in Kitale Chief Magistrate's court in CMCC No. 186 of 2016 delivered by P.C. Biwott Senior Principal Magistrate on 1/03/2018)

SAMUEL SAWE NYANGENAAPPELLANT

VERSUS

JAPHETH KISAJE1ST RESPONDENT

SAMUEL LOSEM2ND RESPONDENT

R U L I N G

1. By his application dated 8/3/2018 the applicant prays that there be a stay of execution of judgment/decreed dated 1/03/2018 pending the determination of this application as well as the intended appeal. The application is supported by the affidavit of the applicant sworn on the same date.
2. The said affidavit showed that the applicant's suit at the lower court was dismissed on 1/03/2018 with costs to the respondents. Being dissatisfied with the said decision, he had preferred an appeal as per the attached copy of the Memorandum of appeal.
3. The gist of the application is that the respondent shall execute the decree which shall render him suffer loss and damage. He states further that he has an arguable appeal with great chance of success.
4. The respondent on his part has opposed the application for being unmeritorious and a abuse of the court process as the suit was dismissed at the lower court. This is contained in the grounds of opposition filed on 16/3/2018.
5. It is trite law that for such an application to succeed one ought to show that the intended appeal has a high chances of success and that he stands to suffer great loss if the decree complained of is not arrested.
6. The application before this court is a unique one. The applicant's suit was dismissed with costs. He has filed the appeal herein. The only issue which the court has condemned him to pay is costs. The claim as per the plaint was for liquidated sum of Kshs 3,374,590 together with costs and interest. If the suit was dismissed what is there to stay? Perhaps the only risk that the applicant risks suffering is costs awarded to the Respondent. As it is I do not see any evidence of such an assessment.
7. Consequently, I find this application unmeritorious. The applicant is already and rightfully so before this court and that is left for him to do is to process his appeal. Should there be such precipitate execution proceedings, then this court is amenable to interrogate it at the appropriate time if it is moved.
8. The application is dismissed. Costs shall abide the outcome of the appeal.

Delivered, signed and dated at Kitale this 16th day of April 2018.

H.K. CHEMITEI

JUDGE

16/4/18

In the presence of:

Mufutu for the Respondents

Applicant in person

Ruling read in open court.