



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CIVIL APPEAL NO.34 OF 2010

PAMBA ONWENO AMILA.....APPELLANT

VERSUS

JOHN JUMA KUTOLO.....RESPONDENT

RULING

1. **PAMBA ONWENO AMILA**, the applicant herein brought an application by way of Notice of Motion dated 17th April 2018 pursuant to sections 3A, 75, 78 and 79G of the Civil Procedure Act and Order and Order 42 Rule 6 of the Civil Procedure Rules and all enabling provisions of the law. The applicant is seeking orders as follows:-

- a) That there be a stay of execution of the decree and judgment herein pending the hearing and determination of this application.
- b) That the costs be provided for.

2. The application was premised on the following grounds:

- a) That the respondent has instructed a firm of auctioneers to attach his property.
- b) That the respondent has failed to work out proper calculations to reflect the outstanding balance.

3. The application was opposed on the following grounds:

- a) That the Notice of Motion is incomplete.
- b) That the amount claimed was properly and procedurally arrived at by the Court.
- c) That the application lacks legal basis and that it is an abuse of the due process of the court.

4. Paragraphs 2&3 of the Notice of Motion have gaps. In my view these gaps have left out some dates. Though this is an undesirable practice, I find that it cannot be a basis for dismissing the application. But for the missing date, one is able to understand the prayers thereat.

5. I have perused the court record and noted that the outstanding calculations at the court registry as at 7th February 2018 is shown as Kss.86,060/=. This is the amount that is reflected in the notice issued to the applicant by Eshikoni Auctioneers as the basis for the attachment.

6. The application therefore lacks merit. The same is dismissed with costs to the respondent.

DELIVERED and SIGNED at BUSIA this 29th day of May, 2018

KIARIE WAWERU KIARIE

JUDGE