

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 543 OF 2017

PETER KUSIMBA NYONGESA.....1ST APPELLANT

GRACE MURORIA.....2ND APPELLANT

VERSUS

WILLY MULI MUSYOKA MAATI.....DEFENDANT

RULING

This is an application dated 10th October, 2017 under Sections 1 A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 50 Rule 1 of the Civil Procedure Rules, for the substantive order of stay of execution pending the determination of the appeal filed against the judgment of the lower court. There is a supporting affidavit annexed to the application alongside reasons that appear in the application.

The application is opposed and there is a replying affidavit sworn by the respondent. The respondent has a judgment in his favour against the appellants. There is a Memorandum of Appeal already filed running into 11 paragraphs challenging the said judgment. The appellants say they have an arguable appeal with high chances of success.

There is fear that if the lower court decree is executed and the decretal sum paid to the respondent, the appellants are likely to suffer irreparable and substantial loss as the respondent is unlikely to reimburse the decretal sum should the appeal succeed.

The respondent on the other hand states that no sufficient reasons have been advanced to justify the order sought, and no prejudice has been shown will be suffered if the order is not given. He is however ready to accept half of the decretal amount as a condition for stay and the balance of the decretal sum be deposited in an interest earning account in the names of both advocates.

Both parties have filed submissions which I have considered. The application was filed timeously. The respondent has a judgment in his favour while the appellants have a right of appeal.

I am inclined to grant the order sought on condition that the appellants pay the respondent a sum of Kshs. 1 Million, and cause the balance to be invested in an interest earning account in the names of both advocates for the parties within 30 days from the date of this ruling. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 19th Day of June, 2018.

A. MBOGHOLI MSAGHA

JUDGE