



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO 64 OF 2018

CHARLES WESONGA MBINGI.....APPLICANT/APPELLANT

VERSUS

BERNARD ODHIAMBO OMUSI.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AYOTI DISTRUBUTORS.....3RD RESPONDENT

RULING

1. By a notice of motion dated 20.7.18 brought under Section 3A of the Civil Procedure Act and Order 22 Rule 2, Order 50 Rule 1, 4, 6, 10 (1) and (2) Rule 1(a) of the Civil Procedure Rules and all enabling provisions of the Law, the applicant/appellant prays for orders that

1.....Spent

2. The Honourable Court be pleased to issue an Order of Stay of the Judgment and Decree in KISUMU CMCC NO.86 OF 2016 together with subsequent orders arising therefrom pending the hearing and determination of this application interpartes

3. Costs of this application be provided for

2. The application is based on the grounds among others that judgment has been entered against the appellant for Kshs. 1,000,000/- and that he was not given a chance to state his case.

3. The application is supported by an affidavit sworn by the applicant on 20.7.18 in which he reiterates the grounds on the face of the application. Attached to the affidavit are pleadings and correspondence filed in the lower court.

4. The application is opposed on the grounds set out in the 1st respondent's replying affidavit sworn on 27.7.18. He avers that applicant failed to comply with orders granted by the trial court even and that the case was adjourned occasionally at the instance of the applicant.

5. I have considered the application in the light of the affidavits on record. Applicant seeks stay orders pending the hearing and determination of this application. This application has been heard interpartes and the order sought would in the event that it is granted lapse at the determination of this application. The order sought would be granted in vain and would serve no meaningful purpose.

6. The upshot of my analysis is that the notice of motion dated 20.7.18 is devoid of merit. It is dismissed with costs to the 1st respondent.

DATED AND DELIVERED AT KISUMU THIS 1ST DAY OF AUGUST 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant/Appellant - N/A

Respondent - Ms. Nyangalo h/b Mr. Ochieng