

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 108 OF 2018

DICKSON KITUVA MASWILI.....PLAINTIFF

VERSUS

VIVEK INVESTMENTS LIMITED.....1ST DEFENDANT

DENNIS SEGERA ONYANCHA.....2ND DEFENDANT

RULING

There is a judgment in favour of the respondent herein in the sum of Kshs. 800,000/= delivered by the lower court on 13th February, 2018. The applicants herein were aggrieved by that judgment and have filed a memorandum of appeal. It is dated 23rd and filed on 28th February, 2018.

This was followed by an application for stay of execution of the said judgment pending the hearing and determination of that appeal. That application was dated 9th and filed on 10th April, 2018. It is under Sections 1A, 1B and 3A of the Civil Procedure Act, Orders 51 and 42 rule 6 of the Civil Procedure Rules.

The grounds appear on the face of the application and the supporting affidavit sworn by the 2nd applicant. The application is opposed and there is a replying affidavit sworn the by the respondent.

The applicants have a right of appeal while the respondent has a valid judgment in his favour. The challenge to the lower court judgment is on both liability and quantum. The applicants have a valid apprehension if the decretal sum is paid to the respondent, it may be difficult to recover the same if the appeal succeeds in which case it may be rendered nugatory. The respondent on the other hand depones that he is a sole bread winner of his family who is now unable to work and now depends on handouts from well-wishers to support his family despite having successfully litigated his case.

In balancing the interest of both parties I am inclined to allow the application on the following terms. The applicants shall pay the respondent a sum of Kshs. 400,000/= and cause the balance of the decretal sum to be secured by way of a bank guarantee. The above conditions shall be effected within 30 days from the date of this ruling. In default execution shall issue. Costs shall be on appeal.

Dated, signed and delivered at Nairobi this 31st day of October, 2018.

A. MBOGHOLI MSAGHA

JUDGE