

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 142 OF 2018

FESTUS MUOKA NZELU.....APPELLANT

VERSUS

ELIZABETH WANGUI.....1ST RESPONDENT

GRACE N. MURITHI.....2ND RESPONDENT

RULING

This is an application dated 20th June, 2018. There are two orders but one substantive order sought by the applicant. That is a stay of execution of the lower court judgment delivered on 23rd February, 2018. The grounds are set out on the face of the application. The application is opposed and there is a replying affidavit sworn by the respondents.

There is a real threat of execution, yet the appellant has a right of appeal. The respondents also are entitled to the fruits of their judgment. The court has the duty to balance the interests of both parties. Liability had been agreed in the lower court. The appeal therefore is on quantum. The application was filed timeously. No serious prejudice has been demonstrated shall befall the respondents if there is stay of execution.

Considering the material presented, I hereby give an order of stay of execution on the following terms. The appellant shall pay the respondents a sum of Kshs. 500,000/=. The balance of the decretal sum shall be deposited in an interest earning account in the joint two names of the advocates on record for the parties. These conditions shall be fulfilled within 30 days from the date of this ruling. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 20th Day of December, 2018.

A.MBOGHOLI MSAGHA

JUDGE