

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 294 OF 2015

JOEL KYALO MWEI.....APPELLANT

VERSUS

SIMON GICHORU MUYA.....1st RESPONDENT

WANJIKU WANYEKI MWANGI.....2nd RESPONDENT

RULING

By an application dated 5th June, 2018 the applicant seeks the stay of execution of the judgment of the lower court delivered on 12th June, 2015. This is not the first application of this nature relating to the said decree because there was filed Miscellaneous Application No. 251 of 2015 which was handled by both Justice Onyancha and Justice Mabeya who gave some orders relating thereto.

The reasons for seeking the present order are set out on the face of the application alongside an affidavit sworn by the appellant. There is a replying affidavit sworn by the advocate for the respondent and both parties have filed submissions herein. The order sought is discretionary which discretion has to be exercised judicially. There is evidence that part of the decretal sum amounting to Kshs. 500,000/= has been paid leaving the balance now due.

The application herein was filed almost 3 years after the said decree and no sufficient reason has been offered by the appellant to justify the delay. The court is supposed to balance the interests of the parties in addressing such applications. Although the appellant filed a Memorandum of Appeal on 16th June, 2015 there is no evidence whatsoever, that he has made any attempts to progress the filing of the record of appeal apart from the application now before the court. Whereas he may have the right of appeal, the respondents also have a judgment in their favour which they desire to execute.

In a letter dated 15th June, 2015 written by the appellant's advocates to the respondent's advocate, a settlement of this dispute was addressed. It is three years down the line and other than the payment of Kshs. 500,000/= which has been paid, no other payment has been offered or made. Good faith has not been demonstrated and no security has been offered in the present application. The order sought by the appellant may not be granted without resultant injustice on the part of the respondents. I am not persuaded that the appellant is deserving of the order sought. Accordingly, the application is dismissed with costs to the respondents.

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

A. MBOGHOLI MSAGHA

JUDGE