



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. CIVIL APPLICATION NO. 5 OF 2017

PAUL KIRIMI KITHINJI.....APPLICANT

VS

JOHNSON KYENZEKU KALELU & GLADYS WANZA KALELU

(Suing as the administrator of the estate of

Deceased Paul Musyimu Kalelu.....RESPONDENT

RULING

Notice of Motion dated 2nd February 2017 was brought by Muthega & Kariuki Advocates on behalf of Applicant –Judgment Debtor seeking orders of stay of execution of judgement and Decree in Githongo SRMCC No. 37 of 2015 pending the determination of the application.

The application was supported by grounds on face of application and affidavit of Paul Kirimi Kithinji. The Judgement in Githongo SRMCC No.37 of 2015 was delivered on 4th November 2016 in favour of the Respondent for the sum of Kshs. 948,678/- together with costs.

Stay of execution pending appeal by applicant is an application that is provided for under order 42 Rule 6(1) & (2) of Civil Procedure Rules. The grounds to prove while seeking stay of execution are provided under order 42 Rule 6(2) CPR.

The applicant didn't quote the order or rule under which application was made neither did they attempt to prove that the plaintiff will suffer substantial loss if orders of stay are not granted;

They didn't bother to prove application had not been filed without unreasonable delay and they didn't offer security due to performance of the decree on order as may ultimately be binding on them.

What the applicant endeavoured to prove is that the decree had been forwarded to insurance company but got misplaced when they were moving office as per affidavit of legal officer to APA insurance Company Ltd.

Judgement from Githongo SRMCC No.37 of 2015 was delivered on 4th November 2016. The decree and Certificate of Costs is signed on 25th January 2017. Annexure PKKZ doesn't make any reference to Civil Case No. 37 of 2015 and it is not known of what importance it is in the application. From the letter dated 27th January 2017 by Lee Maina & Associates for Decree Holder the decree and Certificate of

Costs were forwarded to Judgment Debtors counsel Muthega & Kariuki Co. Advocates and J.G. Gitonga & Co. Advocates.

I'm unable to find in the affidavit and the annexures that applicant has proved a case for stay of execution. In regard to leave to file appeal out of time and do allow same and give applicant 14 days within which to file and serve the intended appeal. Application for Plaintiff allowed. Half costs to Respondent.

Ruling Signed, Delivered and Dated on this 28th Day of April 2017.

In the presence of:

C/A –Penina

Applicant- Mr Kariuki for advocate

Respondent –M/s Lee Maina & Associates advocates for associates.

HON. A.ONG'INJO

JUDGE