

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 44 OF 2015

BENSON KAMAU MUTURA.....APPELLANT

VERSUS

JAMES MURIMI KAHINGA.....RESPONDENT

R U L I N G

1. This ruling is on the application by **notice of motion dated 15/08/2016** by the Appellant for stay of execution of decree pending disposal of the appeal. The Respondent has a money decree (judgment sum was KShs 120,00/00 plus costs and interest). The Respondent had sued for refund of the KShs 120,000/00 which he had paid to the Appellant as purchase price for a plot of land which the Appellant later failed or refused to transfer to him.

2. The grounds of the application appearing on the face thereof include –

(a) That the Appellant's property is already under attachment in execution of the decree.

(b) That the appeal will be rendered nugatory if the execution proceeds.

3. The Respondent opposed the application by grounds of opposition dated 23/08/2016. One of those grounds is that the decree being a money decree, the Appellant cannot suffer irreparable loss as the Respondent can always refund the decretal sum paid in the event that the Appellant succeeds in his appeal.

4. At the hearing of the application, learned counsel for the Respondent submitted that as the Appellant had stated in his application that he was ready to comply with any order for security that the court may be pleased to make, the Respondent would have no objection to the stay sought if the decretal sum is deposited in court. The Appellant's response was to state that he had no money and offered alternative security in the form of land. He did not give any particulars of this land or offer any documents thereof for examination by the Respondent's learned counsel.

5. Upon the submission made by the learned counsel for the Respondent I will allow the Appellant's application and grant the stay of execution sought pending disposal of the appeal. That stay is conditional upon the Appellant depositing in court as security the decretal sum of KShs 258,790/00 within fourteen (14) days of delivery of this ruling. In default the stay of execution now granted shall stand vacated. It is so ordered.

6. Costs of this application shall be in the appeal.

DATED AND SIGNED AT MURANG'A THIS 22ND DAY OF JUNE 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 23RD DAY OF JUNE 2017