



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL APPEAL NO.68 OF 2013

GILBERT WANJALA FWAMBA.....APPELLANT

VERSUS

P.N. MASHRU LTD.....RESPONDENT

RULING

1. The application before Court is dated 26th January 2017 brought pursuant to Sections 1A, 1B, 3A & 63E of the Civil Procedure Act and Order 42 rule 6 of the Civil Procedure rules. The same seeks several prayers as follows;

- a) *That the application be certified urgent.*
- b) *That the Court do issue an order of Stay pending hearing of the application inter partes.*
- c) *The Court be pleased to grant an order of Stay of execution of the decree and judgement of this Court dated 18th January 2016 pending hearing and determination of Court of Appeal Kisumu Case number 19 of 2016.*
- d) *The warrant of attachment and warrant of sale issued and dated 16th January, 2017 in these proceedings be recalled and annulled and the same be held to have been illegal, null and void.*
- e) *The attachment by way of proclamation carried out on 20th January, 2017 and any further execution process based on the warrant of attachment and sale dated 19th January 2017 be declared illegal and void.*
- f) *The Appellant be condemned to pay the auctioneer's costs.*
- g) *Costs of this application.*

2. The application was grounded on the following;

This Court issued an order of Stay of Execution of the judgement dated 18th January, 2016 on the 21st of July, 2016 which order has neither been set aside nor discharged; the applicant deposited a sum of Kshs.895,558 which is the disputed outstanding amount in Court on the 16th of August, 2016 in compliance with the Court order, a sum of Kshs.714,245/- had been paid to the applicant's Counsel way back on the 15th of January, 2014 and therefore the decretal sum has not since fallen due as the appeal against the judgement of this Court is yet to be determined; and that execution was in violation of an

existing order of Stay.

3. The Appellant opposes the application through grounds of opposition stating that the application is resjudicata, it is frivolous, scandalous and solely intended to obstruct justice, is vexatious and an abuse of Court process.

4. There is no doubt that on the 21st of July 2016 this Court issued an order of stay of execution which remains in force to date. Secondly that in compliance with the said order the Applicant deposited the sum of Kshs.895,558 with this Court.

5. None of the above facts referred in Paragraph 4 have been disputed by the Applicant and it is not clear on what basis the warrants of attachment and sale order issued against the applicant.

6. I do agree with the appellant and only to this extent that this Court ought not to issue another order of Stay while the earlier one still remains in force.

7. Having stated the above and against the background set above the warrant of attachment and sale ought not to have issued, the same are therefore recalled and annulled accordingly.

8. For the above reason the appellant will bear the cost of this application and of the auctioneers if any.

DATED and DELIVERED at BUNGOMA this 21st day of September, 2017

ALI-ARONI

JUDGE