



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL APPEAL NUMBER 146 OF 2014**

**SUSAN NJERI GITAU.....APPELLANT/APPLICANT**

**VERSUS**

**DAVID HURIA KIBERENGE.....RESPONDENT**

*(An appeal against the Ruling of Hon. Amwayi – Principal Magistrate delivered on 8<sup>th</sup> October, 2014 in NAKURU CMCC NO. 1129 of 2010)*

**RULING**

1. By its Notice of Motion application dated 17<sup>th</sup> February 2015, the Appellant, Susan Njeri Gatau seeks leave of court to be allowed to deposit in court title **Number Gilgil/Karunga/Block1/1138 Kasambara**) as security pending appeal in place of monetary security ordered by the lower court.

On the 11<sup>th</sup> February 2015, the lower court granted an order of stay of execution of the decree pending hearing of this appeal on condition that the entire decretal sum of Kshs.382,450/= is deposited in a joint account of the parties advocates.

In her affidavit in support of the application, the applicant deposes that she is unable to raise the sum ordered deposited as she had been hospitalised following a road traffic accident and offered alternative property stated above together with a value report and an official search. The valuation certificate dated 13<sup>th</sup> November 2014 and prepared by D.N. Arimi, a land valuer, gives a market value of Kshs.450,000/=. The certificate of official search dated 12<sup>th</sup> November 2014 confirms that applicant is the registered owner of the property.

2. In opposing the application, the respondent swore two affidavits on the 10<sup>th</sup> March 2015 and another by Mr. George Mbiyu Advocate on the 17<sup>th</sup> July 2015.

It is deposed that the applicant is a woman of means and can pay the monetary security as ordered by the court and that the application is only made to delay conclusion of the case. Attached as exhibit are assets including motor vehicles, bank shares and Bank accounts to show that she is able to raise the security of Kshs.382,000/=. It is further deposed that the security being offered as alternative to money may prove difficult to sell and realise the decretal sum should the appeal not be successful.

3. The court has considered that the trial court rejected a similar application and ordered monetary security to be deposited in court. I have perused annexure “GKMI” in the respondent's replying affidavit. It is a schedule of assets and shares ascertained for distribution to the applicant out of the Estate of her late husband. It includes five motor vehicles, six bank accounts and shares in seven banks and other institutions. That was November 2011. I am not convinced that the applicant, having been a beneficiary of the assets above stated, and in honesty is unable to raise Kshs.380,000/=. To offer land as security, though quite in order, may prove difficult to realise the decretal sum which continues to accrue interest in view of hard and long procedures towards sale of a property. I have noted that the applicant was unwell and hospitalised in 2011. Her current health condition has not been disclosed. It is not enough to ask the court to order substitution of the monetary security without giving persuasive reasons the applicant has not provided any proof that she is unable to raise the money. She could have provided bank statements of her various

accounts to show how much money she holds in the said accounts. I agree with the respondent that the application is brought in bad faith and made to delay progression of the appeal.

For those reasons, the application is devoid of merit and is dismissed with costs.

**Dated, signed and delivered in open court this 28<sup>th</sup> day of April 2016.**

**JANET MULWA**

**JUDGE**