



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 1550 OF 2005

ALEXANDER OKINDA ANANGWE

(Suing as administrator of The estate

of PATRICIA KEZIA ANANGWE.....PLAINTIFF

VERSUS

1. REUBEN MURIUKI KAHUHA

2. CITY HOPPER LIMITED.....DEFENDANTS

MICHAEL A. CRAIG

REUBEN KAMANDER MBURU.....THIRD PARTIES

MORAN AUCTIONEERS.....INTERESTED PARTY

RULING

The Plaintiff in this suit has a judgment in his favour delivered on 29th May 2015. This Court (Ougo J.) awarded him Kshs. 4,912,756/- plus costs and interest. The Defendants were initially granted 30 days stay of execution but applied formally through notice of motion dated 12th February 2016 which application was compromised on 29th March 2016 by filing consent in the following terms –

“THAT BY CONSENT:-

1. THAT a stay of execution pending appeal be granted to the Judgment-debtors.

2. THAT as a condition to obtaining stay pending appeal that the Judgment- debtor pays the sum of Kshs. 3,000,000/- to the Decree-holder through his Advocate’s account within 14 days of the date of this consent.

3. THAT the balance being the sum of Kshs. 2,598,968/- be invested in a joint interest earning account between M/s Jackson Omwenga & Co. Advocates & M/S Mereka & Co. Advocates in 30 days of this Consent.

4.”

It would appear the Defendants did not fulfill the third condition in the consent and the Plaintiff moved to execute for the same prompting the application at hand. It is for stay of execution of decree and consent pending appeal by Notice of Motion dated 6th June 2016 principally on the ground that time within which the Defendants were supposed to deposit Kshs. 2,598,968/- had lapsed and the Plaintiff had declined to grant them an extension within which to deposit the same. They further stated that the Interested party herein-Moran Auctioneers had sought to proclaim for an amount of Kshs. 5,599,743/- whereas 3,000,000/- had already been paid as per the consent.

Stay of execution lapsed 30 days after the filing of the consent that is on 1st May 2016. This is because the stay was conditional and in the event of default on any of the orders, the stay of execution granted was to automatically lapse. Therefore the Plaintiff was at liberty to execute.

The Defendants have not convinced the Court that any of the grounds for setting aside a consent judgment exist in this case. Further, there is no evidence of any substantive appeal at the Court of Appeal as it has been conceded that the Defendants' notice of appeal was filed out of time.

It is to be noted that there is no stay of execution of the decree, the same having lapsed as already noted. In the circumstances, the Notice of Motion dated 6th June 2016 is dismissed with costs to the Plaintiff. It is so ordered.

Dated, signed and delivered at Nairobi this 13th Day of October, 2016.

A. MBOGHOLI MSAGHA

JUDGE