

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC APPLICATION NO. 222 OF 2015

GILBERT OKERO OMBACHIT/A G.O. OMBACHI & CO ADV.....APPLICANT

VERSUS

ISAAC MBURU NJUGUNA.....RESPONDENT

RULING

1. The applicant's application seeks an order to stay execution proceedings in this matter pending the hearing and determination of a complaint that is pending against the applicant in the Law Society of Kenya. He has raised four grounds in support of his application. In ground 1, he has stated that there is pending in the Law Society of Kenya, a complaint against the applicant. In ground 2 the applicant has stated that this instant application should be allowed in order to stop the decree from being executed against him and unless it is allowed, it is likely to cause injustice to him.

2. In addition to the grounds of opposition, the applicant has anchored his application in his supporting affidavit. In that affidavit, he has deponed to an eleven paragraph affidavit. Among the major paragraphs are that he is opposed to the notice to show cause dated 8th June 2016, in which the applicant is seeking to execute the decree by attaching his rice holdings. He has further deponed that he does not owe the applicant any money because the decretal amount, which arose from the Co-operative Tribunal case No. 40 of 2009 was paid to the applicant who was his advocate on record. He has further deponed that the applicant refused to release the money to him, as a result of which he filed a complaint with the Law Society of Kenya. It is for these reasons amongst others that he seeks a stay of execution of the decree issued against him pending the determination of the complaint against the applicant by the Law Society of Kenya.

3. The applicant has filed a replying affidavit, which contains 12 paragraphs in opposition to the application. He has deponed that the application is an abuse of the court process intended to obstruct and delay justice. He has also deponed that there is no case pending against him before the Law Society of Kenya. He has further deponed that he adequately responded to the complaint raised against him by the respondent and a result of which there is no complaint pending before the Law Society against him. He has also deponed that certificate of costs in the sum of Kshs 61,425/- was issued in his favour against the respondent on 11th December 2011. Following the issuance of the said certificate, the applicant served the respondent with an application for its execution to which the respondent stated that he did not wish to have his rice holding No. 253 Unit T.19 attached as the same was in the process of being sub-divided amongst his children. Finally, the applicant has deponed that this application is meant to delay justice and to deny the applicant the fruits of his judgement.

4. I have considered the affidavit evidence of both parties. I find that there is in place a decree in favour of the applicant to be executed against the respondent. This decree was issued by the Co-operative Tribunal. In the circumstances, the reasons advanced by the respondent seeking stay of execution of that decree are not justifiable. The proper procedure for challenging a decree of a court is either by way of review or by way of an appeal. The applicant has neither sought a review of the decree nor has he appealed against it. Even if there was such a complaint, that is no ground for seeking to stay the execution proceedings.

5. The respondent's application is hereby dismissed with costs to the applicant.

RULING DELIVERED, DATED and SIGNED in open court at **EMBU** this **12th** day of **OCTOBER, 2016**.

In the absence of the applicant and in the presence of the respondent.

Court clerk Njue

J.M. BWONWONGA

JUDGE

12.10.16