REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL CASE NO. 326 OF 2014

BUSINESS CAPITAL ACCESS LIMITED…..…1ST APPELLANT

JEREMIAH KIARIE MUCHENDU T/A

ICON AUCTIONEER…………………………...2ND APPELLANT

VERSUS

MARY MUMBUA MUTUKU………………….1ST RESPONDENT

PETER MUTUKU MUKANDA ………………2ND RESPONDENT

RULING

Before this court for determination is an application by way of Notice of Motion dated 31st July 2014 by the appellant/applicants Business Capital Access Ltd and Jeremiah Kiarie Muchendu T/A Icon Auctioneer seeking orders that:-

1. Spent

2. There be stay of execution pending the hearing and determination of the appeal.

3. There be stay of proceedings at the lower court pending hearing and determination of the appeal herein.

4. The proceedings in the lower court's file be typed on a priority basis to hasten the preparation of the record of appeal.

5. Costs of the appeal (six) be provided for the application is premised on the grounds that:

    1. The learned magistrate erred by making blanket order compelling the appellants to pay the sum of kshs 600,000 to the court without any basis whatsoever.

    2. The motor vehicle registration number KBC 461N, Toyota Vitz 2001 model which is the subject matter of the lower court proceedings cannot be valued at even shs 200,000 in the year 2014.

3. That similarly the party and party costs in the subordinate courts in the lower court suit cannot be more than kshs 80,000 on the higher scale as provided for in the remuneration order.

4. That item No. 4 of the order made by the learned magistrate is totally contradictory and takes away the rights of the appellants I finality as it renders the entire suit nugatory and the same should be reviewed.

5. That the essence of depositing money in court is to be held in stake pending the hearing and determination of a suit in the current circumstances the learned magistrate orders the release of the money within 90 days to the plaintiffs.

The application is further supported by the affidavit of Njage Makanga the director of the 1st appellant company. Mr Makanga deposes that the trial magistrate erred by not giving their counsel audience in an application for review of orders earlier issued on 26th May2014 without any just cause or reasons whatsoever .

In addition, that the reason for filing the application for review late by a day was that the subject matter of the suit to hit motor vehicle registration No. KBC 461N Toyota Vitz model 2001 was sold in the year 2011 and took sometime before they could obtain valuation report for the said motor vehicle which reasons were well laid out in the said application. He annexed 'NM1' copy of the valuation report.

Further, that the magistrate in the orders issued on 26th May 2014 made an order that the appellants deposit shs 600,000 being the cost of the motor vehicle in issue together with costs in court pending the hearing and determination of the main suit in the lower court.

That as at May 2011 the value of the subject motor vehicle was shs 350,000 two months before it was sold . That the party to party costs could not be more than 80,000 on the higher scale and therefore cumulatively the court should have made an order for the deposit of shs 400,00/- at most.

That the magistrate contradicts item 1 and 4 of the order allowing the plaintiff to collect the amount of money deposited in court within 90 days irrespective of the status or the outcome of the hearing of the main suit, which order is totally prejudicial against the appellants as the item No. 4 totally extinguishes the rights of the appellants without being heard.

That the motor vehicle cannot be valued at 200,000/- in 2014 hence the magistrate misdirected herself in giving the value of the motor vehicle without any legal basis or documentary evidence.

That the magistrate made an ambiguous order.

The respondents filed replying affidavit sworn by Peter Mutuku Mukanda on 14th October 2014 on behalf of the 1st respondent Mary Mumbua Mutuku and on his own behalf.

He contends that the appellant's affidavit and application contain false and misleading averments.

That the respondents did by chamber summons dated 17th December 2010 seek for a prohibitory injunction restraining the appellants from selling, alienating transferring, wasting or interfering with their motor vehicle KBC 461N Toyota Vitz pending hearing and determination of the suit.

That the said application was allowed bide ruling of Honourable Kimondo J on 16th March 2012 which order was served upon the appellants and their advocates but there was no compliance . See exhibit PMM-1.

That the appellants then filed an application for review before Honourable Justice Kimondo which application was also dismissed with costs as shown by exhibit PMM2.

That the application dated 7th October 2013 was for committal to civil jail as shown by PMM3 copy of the said application and ruling delivered on 4th April 2014. That the shs 600,000/- was a penalty imposed by the court for contempt of court not based only on the value of the motor vehicle.

That the magistrate was right in imposing the penalty considering the value of the motor vehicle and that there was no truth that the motor vehicle was valued at shs 350,000/-.

That there is no contradiction in the orders of the magistrate as they are meant to safeguard the integrity of the court.

That this application is an abuse of the court process and any stay will amount to condoning impunity and disregard for court orders.

That no appeal was filed against the orders of Honourable justice Kimondo hence this application lacks merit.

On 13th November,2014 the appellants filed a supplementary affidavit to the effect that the interim orders issued pursuant to a chamber summons dated 17th December 2010 lapsed on 16th March 2011 and were never renewed or extended hence the respondents lost the protection of the court.

That the said chamber summons was canvassed by way of written submissions notwithstanding the fact that the interim orders had lapsed as aforesaid.

That the matter was first handled by Honourable Justice Njagi but was ultimately placed before Honorable Kimondo J who delivered a ruling on 16th March 2012 exactly one year after the lapse of the interim orders.

That the orders of Honourable Kimondo were incapable of enforcement as the motor vehicle was sold to a third party in July 2011 as shown by NM2 copy sale agreement and that the motor vehicle was registered in the 1st appellant's name with consent of 2nd respondent.

That Honourable Kimondo transferred the matter to the lower court for hearing wherein contempt proceedings were commenced culminating to this appeal. He maintains that shs 600,000/- ordered to be deposited in court was the value of the motor vehicle as per the order of the magistrate as shown by 'NM2'the said order.

That the order does not refer to any punishment or at all and that the motor vehicle was valued at shs 350,000/- in 2011 and no other valuation report controverted that evidence by the appellant . The parties agreed to dispose of the appeal by the way of written submissions with the appellant's counsel filing theirs on 15th December 2014 and the respondent's counsel filing theirs on 3rd February 2015.

The appellant's written submissions replicated the grounds and affidavits in support of the application as filed and I need not reproduce the submissions as they are fully covered in the supporting and supplementary affidavits on record which I have exposed above .

The respondent's submissions on the other hand need some deeper consideration as they went notch higher then what is contained in the replying affidavit of Peter Mutuku Mukanda on 14th October 2014.

The respondents submitted that the applicant do not deserve the orders sought as they have not satisfied the court on the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules which govern grant of stay of execution pending appeal principles namely that they have not established that:

a) Substantial loss may result to them unless stay order is made.

b) The application has been made without unreasonable delay; and

c) Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

On substantial loss, the respondent submits that it is them who have suffered loss as a result of the appellant's action of disposing of the motor vehicle subject matter of the suit in flagrant disobedience of court orders. he relied on the case of **Joseph Mburu Gitau vs Mungai Kimanange (2014) e KLR** where the court held, inter alia :

"…………there is of course the possibility that these findings of fact and law could be overturned by this court, but in the particular circumstances of this case and as set out in the lower court record, he appellant has not demonstrated that he stands to suffer substantial loss. What will be taken away from him in execution of the decree is simply what he should not have taken away from the respondent in the first place.

According to the respondent, the value of the motor vehicle was only one of the factors taken into consideration in ordering for deposit of 600,000/- into court. Further that the applicant has not shown what substantial loss will be suffered by them in complying with the court order which required a deposit of shs 600,000 in court and that if the submission by the appellants is accepted, the applicants would be allowed to get away with disobedience of court orders which the court should not condone.

On the issue of requisite security, the respondent submitted , citing **Trust Bank Ltd vs Ajay Shah & 3 Others (2012) e KLR.** That failure to offer any security for the due performance of the orders issued by the trial court disentitles the applicant from enjoying the discretion of the court in granting an order of stay of execution pending appeal. In **Stephen M'Ikunyua M'Imathike & 7 Others vs Rev. Elijah Mwingi (2006) e KLR** where Lenaola J held:

" for the direction to be exercised in favour of the appellant, the court is enjoined to do so upon a security being given by the appellant or the court would otherwise create other terms as it deems fit for granting the stay of execution. In the instant application it is from the bar that Mr Kariuki for the appellant has offered security which is unclear . Why was that mater not deponed to in an affidavit by the appellant….. ". I agree that an application under Order 42 Rule 6 (2) of the Civil procedure Rule must offer to give security at the time of making the application as a sign of bona fides. In this case none has been given".

The respondent submitted that the applicant's failure to offer security that would be ultimately be binding on him takes away the discretion of the court in considering whether to grant the orders sought .

Finally, the respondent submits that the applicant must comply with orders issued by the subordinate court so as to pave way for the substantive hearing and urged this court to dismiss the application with costs to the respondents.

I have carefully considered the appellant/applicant's application for stay of execution pending appeal and stay or proceedings in the lower court pending hearing and determination of this appeal.

To determine this application , it is necessary to outline the basis facts that are apparent on record , culminating in this appeal and hence, the application . Although the pleadings in the lower court are not annexed hereto for perusal, but it clearly emerges that the origin of the dispute between the parties hereto was Nairobi High Court (Commercial & Admiralty) suit No. 888/2010 wherein the respondents herein **Mary Mumbua Mutuku and Peter Mutuku Kukanda** were the plaintiffs suing the appellant herein **Business Capital Access Ltd and Jeremiah Kiarie Muchendu T/A Icon Auctioneers** .

In the said suit, the respondents herein field a Chamber Summons dated 17th December 2010 seeking for an injunction to restrain the appellants from selling, alienating or dealing in any manner with motor vehicle registration No. KBC 461N Toyota Vitz. They also prayed for a mandatory injunction

compelling he appellants to release the said motor vehicle to the respondents.

The suit was as a result of the 2nd respondent taking a loan from the 1st appellant in the sum of shs 100,000/- upon security of the said motor vehicle, repayable at sh 9,000/- per month and he defaulted after paying shs 98,000/- upon which the 1st appellant allegedly transferred the motor vehicle to itself as per the loan agreement and claimed a further default interest rate of shs 10% per month which the respondents denied knowledge of as they were not given a copy of a loan agreement. The court upon hearing the parties on the application found merit in it and granted a prohibitory injunction against the appellant from selling, alienating, transferring or dealing with the respondent's motor vehicle registration No. KBC 461 N Toyota Vitz until the suit was heard and determined. Honourable Kimondo J also issued a mandatory injunction to release the respondents forthwith at their cost, the motor vehicle in question to the respondents by the appellants. He also ordered that costs of storage and other charges be borne by the 1st appellant herein. He also awarded cost to the respondents . The orders were made on 16th March 2012 . The above orders of Honourable Kimondo J were never appealed against by the appellants herein and instead, they sought or review of the same vide a notice of motion dated 10th May 2012 brought under Order 45, 40 and Section 80 of the Civil Procedure Act seeking to set aside orders of Kimondo J made on 16th March 2012. It also sought that the court should find that the injunctive orders in favour of the respondents lapsed as the date of the ruling on 15th March 2012.

The appellants further alleged that the court erred in finding that the 1st appellant was a deposit taking microfinance that was operating without license yet the truth was that the 1st appellant did not require a license.

Further, that the interim order of injunction granted on 17th December 2010 lapsed on 16th March 2011and was not renewed hence there was no bar to repossession of the suit vehicle on 7th July 2011 and that motor vehicle had always been in the name of the 1st appellant which fact was not controverted by the respondents herein. That the orders of injunction had lapsed by operation of law after 1 year and that it was lawful business with over 1000 clients and it stood to suffer prejudice by the grant of injunctive orders of 16th March 2012. In dismissing the appellant's application for review on 11th June 2013 the court was categorical ht it lacked merit and that allowing it would amount to sitting on his own appeal.

Further, that it could possibly not be true that the 1st appellant herein loaned the respondents money on a car owned by the 1st appellant. Further, that at the time of its attachment, the 2nd appellant conceded that he had no court order or decree or authority to attach the vehicle but only relied on a loan agreement between the 1st appellant and the 2nd respondent. There was no chattels mortgage or hire purchase agreement and that the application was not brought timeously.

The appellants did not comply with the orders of Kimondo J of 16th March 2012 even after a review thereof was declined on 11th June 2013. Neither did they appeal against the said orders refusing a review. The suit was then transferred to the subordinate (Commercial courts) at the Chief Magistrate's Court in Milimani for hearing and disposal.

On 8th October 2013, by an application dated 7th October 2013 the respondents herein filed a Notice of Motion seeking to have the appellants cited for contempt of court orders issued by Kimondo J on 16th march 2012 and in the alternative the court do order for attachment of the property if the appellants.

The trial magistrate found that there was no appeal against Honourable Justice Kimondo's rulings of 16th March 2012 and 11th June 2013 and that indeed the appellants had not complied with the orders of 16th March 2012 and further, that the judge having found that the appellants had colluded with a third parties to defeat the court orders he found them in contempt and ordered as follows:-

“ having cited the three respondents for contempt of court, I impose penalty as follows:-

1) The defendants jointly and severally to deposit a sum of shs 600,000/- being the value of the suit motor vehicle and the costs herein with the court within thirty (30) days of todays date.

2) Failure to comply with Order 1 above =, on 31st of today’s date, the defendants to be arrested and be committed to civil jail for a thirty(30) days preferably at the Industrial Area prison.

3) The said sum of shs 600,000/- be retained by the court until this suit is heard and determined.

4) In case of continued breach and disobedience of the orders issued on 16th March 2012 by the defendants for a period of more than 90 days of today’s date, the sum of shs 600,000 deposited with the court herein be released to the plaintiff’s automatically and unconditionally.

Dated, delivered and signed this 4th day of April 2014

I. Gichohi (MS)

RM”.

The appellants again , did not appeal against the orders of 4th April 2014 and instead sought for review of the said orders of I. Gichohi (MS) which application was declined on 30th June 2014, prompting this appeal filed on 28th July 2014 dated 24th July 2014.

In the ruling of 30th June 2014 the trial magistrate declined to hear the appellants on the grounds that they had not complied with orders of 4th April 2014 which had timelines . Further, that the appellants had no audience before the court and issued a warrant of arrest against them. She also granted them leave to appeal.

Those are the trite facts giving rise to this appeal and application for stay of execution of the orders of 30th June 2014 as well as stay of the said proceedings with the above clear position, I find it quite unusual that the appellants in their supplementary affidavit sworn on 7th November 2014 would swear to the paragraphs 11,12,13,14,16,17,18 which are in essence challenging the orders of Kimondo J in his two rulings referred to above and the ruling of Gichohi (RM) of 4thApril 2014 which orders were never appealed against, as opposed to challenging the orders of 30th June 2014 by Gichobi Honourable.

As correctly submitted by the respondents, an application for stay of execution pending appeal is governed by Order 42 Rule 6 (2) of the Civil Procedure Rule . The appellants never mentioned those provisions in their submissions or even in the affidavits or grounds in support of the application, other than citing them beneath the Notice of Motion dated 31st July 2014. The appellants have engaged this court in a purely academic exercise complaining bitterly against the ruling of the trial magistrate of 4th April 2014 and alleging that the orders of Kimondo J were incapable of being implemented , despite a subsequent ruling by the Honourable Kimondo J asserting the original position, when he correctly dismissed the application for review of his earlier orders, which dismissal order was never appealed against . To be bold with the appellants, they are in essence , by their application dated 31st July 2014 seeking to appeal against the orders of Kimondo J issued on 16th March 2012 and 11th June 2013 respectively through the backdoor, having failed to exercise their right of appeal in both instances.

Furthermore, the appellant’s are guilty of non disclosure of material facts when they filed the

application dated 31st July 2014, they completely left out any reference to the orders of Honourable Kimondo J of 16th March 2012 and 11th June 2013 which they had in my view, brazenly disobeyed, giving rise to the orders of Honorable Gichohi (MS) of 26th May 2014 and 30th June 2014 respectively wherein the honourable magistrate found the appellants in contempt of court orders of 16th March 2012 by Honourable Kimondo J and having so found, declined , in the subsequent application , to hear the appellants out until they purge their contempt.

It was not until the respondents had filed their replying affidavit on 14th October 2014 disclosing all the facts and circumstances of this case which I have reproduced in this ruling and annexing copies of those two rulings/orders by Honorable Kimondo J that the appellants herein owned up vide their complementary affidavit sworn by Njage Makanga on 7th November 2014, even then, the said affidavit was very defensive against the orders of Kimondo J (see paragraph 11,12,13 of the supplementary affidavit) . The appellant further contended that:

" as at the time of filing of this suit" the motor vehicle in question, KBC 461 N was sold to a third party in the month of July 2011 as shown by annexture 'NM2" copy of sale agreement annexture 'NM2" is a copy of order issued on 4th April 2014 by Honourable Gichobi."

The question however is , where was this sale agreement at the time Honourable Kimondo J was hearing and determining the two applications referred to in this ruling why was the agreement not disclosed on 2011 and where has it come from in the year 2014 before the subordinate court?

In addition, this court notes that annexture 'MN2' of the affidavit by Njage Makanga paragraph 8 purportedly annexes copy of logbook for the suit motor vehicle allegedly registered in the name of the 2nd respondent yet, again, no such copy of log book was annexed to the said affidavit. It is a blanket deposition without a physical logbook.

The appellants are in my view, hoodwinking this court with baseless confusing depositions which cannot be substantiated. Particularly when they had alleged in their application for review that the motor vehicle had changed hands way back on 7th July 2011. In paragraph 8 of the ruling of Kimondo J made on 11th June 2013 he stated this:

" ***At the time of the ruling on 16th March 2012, the defendants did not disclose that the motor vehicle had been sold way back on 7th July 2011. It is thus neither here nor there for me to inquire into whether the order of injunction first granted on 17th December 2010 had expired. The truth would seem to be that the defendants concealed that sale to the court. It was not mentioned on their replying affidavit . There was only reference in the defendant's submissions filed on 5th October 2011 that the "application is overtaken by events" as the defendants had sold the vehicle and were no longer in possession. That is not evidence of sale. That is why the court later upon examination of the 2nd defendant and the 1st defendant's director ordered that the alleged buyer be enjoined in the suit. Despite the orders of court and service, the said alleged buyer has not entered an appearance . and if there is such a buyer, why does the 1st defendant now contend that at all material times it owned the vehicle".***

" I have this formed the impression that the present motion is clearly continued to defeat the orders of court of injunction dated 16th March 2012"

The Honourable learned Judge at paragraph 10 also wondered how the 1st defendant was at all material times the owner of the suit motor vehicle yet it had loaned the plaintiffs money on a car owned by the 1st defendant."

With the above strong sentiments made by the learned Judge, this court is indeed shocked to learn that the appellant herein did not appeal against that order/ruling if at all it made sense in fact and or

law. Further, this court is perturbed that indeed this is the first time the appellant is now physically disclosing to the court the existence of a sale agreement for the suit motor vehicle to a third party, which evidence would have been availed to the court during the hearing of the application s subject matter of the rulings of 16th March 2012 and 9th June 2013 and which "suspect sale" the learned judge elaborately alluded to and dismissed . I am equally convinced that the appellants are abusing the processes of this court by escalating a dispute which in my view, was long determined by the ruling of Honourable Kimondo J referred to above and are only oscillating around different courts with a view to defeat not only the orders of injunction of 16th March 2012 but also defeat or obstruct justice for the respondents herein.

This court insulates itself from being a conduct of super white lies to extricate the appellants from escaping facing the justice of the case and resists any attempt by any party from abusing its processes. To allow this kind of application in the glare of such facts as disclosed on record would amount to rendering the court processes absurd and create confusion in court processes. It would also have the effect of condoning impunity of the highest order as the appellant will simply walk away smiling that he has had his day by using incessant tricks .

The appellant must be told in the strongest terms that he cannot hang around court corridors in perpetuity seeking to defeat the course of justice.

This court resists and it is so entitled to reject sitting on appeal of the orders of my learned brother judge Honourable Kimondo J issued on 16th March 2012 and 11th June 2013 . The appellants had an open opportunity to challenge those orders after they were made but failed to do so and are now attacking the said orders in this application. Back to the issue of whether the application for stay pending appeal is merited, I reiterate that without the appellants/ applicants making any reference to the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules and its application or reliance to this application, this court cannot be of any assistance. They have totally failed to demonstrate that they are likely to suffer substantial loss if the stay is declined and the appeal is successful, or that if the appeal succeeds, it shall be rendered nugatory. Secondly, the applicants have not demonstrated any willingness to deposit any security as may be binding on them for the due performance of decree/order. They however brought this application without unreasonable delay. They have also not shown any sufficient cause or that they have an arguable appeal. I say so because the appellants main complaint in the supplementary affidavit and submissions oscillates around the orders of Kimondo J which culminated in their being cited for contempt of court and which orders were never appealed against.

Further, in the application herein consisting of Honourable Gichobi (MS) made on 26th May 2014. In other words, the appellants have failed to demonstrate how the orders of 30th June 2014 will occasion them substantial loss or if not stayed, should the appeal herein be successful, they appeal shall be rendered nugatory.

They have also failed to demonstrate that they are entitled to the prayer for stay of proceedings in the lower court pending hearing and determination of this appeal.

As was stated in Halsbury's Laws of England, 4th Edition VOL 37 page 330 and 332:

> " ***The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings , beyond all reasonable doubt ought not to be allowed to continue***."

This is a power which, it has been emphasized, ought to be exercised sparingly and only in exceptional cases.

" it will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to

be manifestly groundless or in which there is clearly no cause of action in law or in equity . The applicant of a stay of this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case".

In **Standard Ltd & Others vs Wilson Kalya & Another T/A Kalya & Co. Advocates CApp 369/01 Nairobi** the Court of Appeal held, inter alia:

"…………(a) the appellant must show that his appeal is an arguable one. In other words, he must show that the appeal is not a frivolous one

(b) The appellant must also show, in addition , that if the order for stay of proceedings is not granted, his appeal , if it were to succeed , would be rendered nugatory."

In the instant case, it is clear from my analysis of the application that the applicants have not established even by way of submissions sufficient cause to satisfy this court that their application for stay of execution and or stay of proceedings is warranted. By vigorously challenging the orders of Kimondo J and Honourable Gichobi orders of 26th May 2014 given on 4th April 2014, they have missed the mark. They squandered their right of appeal against those orders against those orders and now they ought to be focusing on the orders made on 30th June 2014 and its effect which they have not attempted to address in principle. The applicants are seeking to have a second bite at the cherry. Having chosen the path of review of the orders of Kimondo J and Honourable Gichobi and not appeal, they cannot at this stage purport to be appealing against the said orders which as I have already pointed out in this ruling, is an exercise in futility.

Therefore, having considered this application as a whole and the opposition thereto and the applicable law and principles espoused in judicial precedents, I am not satisfied on a balance of probabilities that the applicants have demonstrated to the satisfaction of the court that they deserve the prayers sought, or that the appeal herein as filed would be rendered nugatory if their applications were not allowed. it is not sufficient to allege . He who alleges must discharge the burden of proof on a balance of probabilities.

In my most considered opinion, each case depends on its own facts and in this case, I find it difficult to be persuaded that the applicants have made out a case on the facts presented that their appeal shall in any way be rendered nugatory if stay is not granted or that they stand to suffer substantial loss.

The appeal may be heard and if successful the proceedings in the lower court would be determined in accordance therein. In addition, if the main challenge is the order of payment of shs 600,000/- then I have no doubt that if the appeal is successful, appropriate orders of refund can be obtained together with costs to compensate the aggrieved party. The appeal will not have been worthless**.(see the Court of Appeal decision in KCB Ltd –vs Benjoh Amalgamated Ltd & Another C.A. Misc Appl No. 50/2001** at page 3 of that ruling.

It is s for the above reasons that I find the application by the applicants dated 31st July 2014 devoid of merit and substance and proceed to dismiss the same with costs to the respondents.

Dated, signed and delivered at Nairobi this 29th day of April 2015

R.E. ABURILI

JUDGE

29.4.2015

Coram Aburili J

C.C. Kavata

Mr Rono holding brief for Mr Langat for 1st appellant

Miss Chepkrui for respondents

COURT – Ruling read and delivered in open court this 29th day of April 2015 at 3.00pm.

R.E. ABURILI

JUDGE

29.4.2015

Mr Rona- I have instructions to seek a stay of 30 days to study the ruling and consult client on the way forward.

Miss Chepkrui- I object to the application for stay. They can apply formally. There is delay and prejudice in the pendence of the lower court matter.

Mr Rono- I leave it to court.

COURT- This application subject of the ruling I have just delivered was for stay of execution of a ruling in the lower court pending this appeal. This court has not made any orders which are capable of being stayed as the application for stay does not state stay of what pending the study of the ruling and instructions from the appellants. Consequently, I decline to grant a stay in vain.

R.E. ABURILI

JUDGE

29/4/2015