



IN THE HIGH COURT OF KENYA

AT MURANG'A

CIVIL APPEAL NO 92 OF 2014

1. LILIAN WANGARI

2. PETER KAMAU NG'ANG'A.....APPELLANTS

VERSUS

JOHN NJIRU NJUERESPONDENT

R U L I N G

1. The appeal herein is against a money decree of the lower Court. On 31/10/2014 the Appellants applied by notice of motion of the same date for stay of execution of the decree pending disposal of the appeal.

2. On 10/11/2014 the said application was disposed by a consent order as follows -

“ORDER: By consent there shall be stay of execution of decree herein pending disposal of the appeal upon the following conditions -

1. The decretal sum of Kshs.2,111,000/00 to be deposited by the Appellants in a joint interest-earning account in the names of the advocates on record for the parties as follows-

a. KShs 1,000,000/00 within thirty (30) days from the date hereof.

b. KShs 1,111,100/00 within ninety (90) days from the date hereof.

2. The said joint account to be opened with *Equity Bank Ltd*, Thika branch.

3. The attached goods belonging to the Appellants be released forthwith upon payment of the Auctioneer's charges, which charges have been agreed at KShs 90,000/00.

4. In default of deposit as above, the stay of execution now granted to stand vacated, and the Respondent may execute.

5. Costs of the application to be in the appeal”.

3. The Appellants subsequently came back to court by notice of motion dated 19/12/2014 seeking an order to review the aforesaid consent to the extent that order 1(b) thereof be vacated and dispensed

with. The application is opposed by the Respondent by replying affidavit filed on 10/02/2015.

4. I have read the supporting and replying affidavits. I have also considered the submissions of the learned counsels appearing. No authorities were cited.

5. It is trite that a consent judgment or order is in the nature of a contract, and will be reviewed or set aside or otherwise interfered with by the Court only upon the same factors as would entitle the Court to interfere with a contract. Those factors include **illegality, misrepresentation, fraud**, etc. No such factors have been urged in the present application. Learned Counsel for the Appellants when presenting the application pointedly stated that there was no fraud or misrepresentation when the consent was entered. He appealed generally to the Court's discretion. But the Court's discretion can be invoked only if it is demonstrated that the contract (i.e., the consent order) was entered into on account of **fraud, mistake, misrepresentation, illegality**, etc. There is even no allegation of such.

6. The Appellants freely entered into the contract. Surely they knew the state of their finances when they did so! They cannot now get out of their bargain.

7. The notice of motion dated 19/12/2014 is entirely without merit. It is hereby dismissed with costs to the Respondent. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY APRIL 2015

H P G WAWERU

JUDGE

DELIVERED THIS 17TH DAY OF APRIL 2015