



IN THE HIGH COURT OF KENYA

AT MURANG'A

CIVIL APPEAL NO 34 OF 2014

PETER KARANJA KAMAU.....APPELLANT

VERSUS

STANLEY MAINA MUNGAI.....RESPONDENT

R U L I N G

1. This appeal was filed on 24th April 2014 by a memorandum of appeal of the same date. The appeal is against a money decree of the lower court. Apparently the lower court granted an unconditional stay of execution pending appeal.
2. By **notice of motion dated 06/08/2014** the Respondent in the appeal has sought an order for dismissal of the appeal upon the grounds that –
 - i. That the Appellant has not complied with Order 42, rules 11, 13, 14 and 35 of the ***Civil Procedure Rules, 2010***.
 - ii. That the Appellant has not caused the appeal to be listed before a Judge for directions under **section 79B** of the **Civil Procedure Act, Cap 21**.
 - iii. That the Appellant has not set down the appeal for hearing three (3) months since the lodging of the appeal.

There is a supporting affidavit sworn by the Respondent.

3. The Appellant has opposed the application by a replying affidavit filed on 13/11/2014. It is sworn by his advocate, **John Kirori Ngaruiya**. It is deponed that delay was caused by prosecution in the lower court of an application for stay of execution. There is also a further affidavit on 02/03/2015. It is sworn by the same advocate. It simply points out that unconditional stay of execution was granted by the lower court.
4. I have considered the application. I note from the Court record that the Appellant filed record of appeal on 13/11/2014. This was after the present application was filed and served. However, the filing and service of the record of appeal is something that the Appellant is to be commended for, not condemned. In these circumstances, the ends of justice demand that the appeal be disposed of by merit after the necessary directions have been given upon the original lower court record being forwarded to this court.
5. The ends of justice also dictate that the Respondents' money decree be secured. I will therefore direct that the Appellant do deposit in court the judgment sum within twenty-one (21) days of delivery of

this ruling. In default the stay of execution granted by the lower court shall automatically lapse and the Respondent shall be at liberty to execute his decree.

6. In summary therefore -

- i. The notice of motion dated 06/08/2014 is dismissed. Costs thereof shall be in the appeal.
- ii. The Appellant shall deposit in this court the judgment sum within twenty-one (21) days of delivery of this ruling.

Those will be the orders of the court.

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

H.P.G. WAWERU

JUDGE

DELIVERED THIS 17TH DAY OF APRIL 2015