



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENT AND LAND CASE NO. 26 OF 2013**

**(FORMER HCC 52 OF 2012)**

**JOHN SIMIYU NDALILA .....PLAINTIFF**

**VERSUS**

**FRANCIS SOITA MATUMBAYI .....DEFENDANT**

**RULING**

[1] The applicant has filed this Notice of Motion praying that there be a stay of execution or further execution of the court's judgment handed down on 8/12/2014.

[2] The reason advanced is that the applicant has filed an appeal to the Court of Appeal No. Civil Appeal No. ELD 29 of 2014. He argues that the appeal has high chances of success and that if the stay is not granted, the appeal shall be rendered nugatory. The respondent filed a Replying Affidavit and opposed the application. He argues the application is non meritorious, frivolous and defective. He argues that the applicant has not demonstrated the irreparable damages he will suffer if stay is not granted pursuant to the dictates in *Giella Vs Cassman Brown(1973) EA*. He prays for the application to be dismissed with costs.

I have read the submissions of the parties herein. The applicant has not proved to me how the appeal to the Court of Appeal shall be rendered nugatory. I was not shown in any way what substantial loss the applicant may suffer if a stay is not granted.

Under Order 42 Rule 6(1) the mere filling of an appeal does not operate as a stay of execution. The applicant herein offered no security for the performance of the decree herein.

All in all I am not convinced that the application herein should be granted.

I accordingly dismiss the same with costs.

**DATED at BUNGOMA this 27<sup>th</sup> day of May, 2015**

**S. MUKUNYA**

**JUDGE**