



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

MISC APPLICATION NO. 288 OF 2015

STANLEY MUIRU NJUNGUNA.....1ST APPLICANT

ANNE NKIROTE.....2ND APPLICANT

VERSUS

**ALICE NJERI (Suing as a Legal Representative of the
Estate of Simon Kamau).....RESPONDENT**

RULING

1. The subject of this ruling is the motion dated 21st October 2015 in which the applicants sought for orders of stay of execution of the decree in **Milimani CMCC NO. 2551 OF 2013** pending the hearing and determination of the application. They also prayed that time stipulated for filing an appeal be enlarged by a further two days and that time within which to deposit the security as ordered by court be enlarged by a further 21 days or alternatively be deposited in court and costs be in the cause. The motion is supported by the affidavit of **Kinyajui Theuri** sworn on 21st October 2015. When served with the motion the respondent filed a replying affidavit, he swore to oppose the motion. Learned counsels appearing in this suit recorded a consent order to rely on the application and their affidavits filed in support and against the motion.

2. I have considered the grounds outlined on the face of the motion plus the facts deponed in the affidavits filed in support and against the application plus the replying affidavit. The applicant had previously through the motion dated 7th July 2015 sought for near similar orders which included: orders for stay of execution of the decree in **Milimani CMCC NO. 2551 OF 2013** pending the hearing and determination of that application and appeal as well as, the enlargement of time within which to file a memorandum of appeal out of time. Pending the hearing of the aforesaid application, the Defendants are before me seeking for a stay of execution of the decree and for the setting aside of the judgment.

3. Upon hearing the application, I ruled on the matter and delivered my ruling on 25th September 2015. I issued orders to the effect that the applicants should file an appeal within 10 days from 25th September 2015. I further issued orders to the effect that the appellant should deposit the decretal amount of kshs 752,787.70/= in an interest earning account in the joint names of the advocates and or firm of advocates from both sides within 30 days from the date of delivery of the ruling.

4. The applicants are now seeking for an extension on the grounds that they delayed to deposit the security due to a disagreement over the financial institution to deposit the money. They averred that they

are willing to deposit the security and added that no prejudice would be occasioned on the respondent in that she can be compensated by way of costs. The respondent conversely argues that the application is an abuse of the court process. She depones that the orders sought by the applicant should not be granted since the applicants are yet to extract the decree which ought to be filed together with the memorandum of appeal. She added that the applicants are yet to apply for certified copies of the trial court's proceedings. She stated that the failure to comply with this court 's orders, the application stands dismissed.

5. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against that supporting affidavit. I have also perused the documents annexed to the application. The applicants have attached correspondences in support of their case. The first letter dated 15th October 2015 is addressed to the respondent's counsel by the applicants counsel requested the respondent to send the requisite documents necessary for opening a bank account. The respondent responded vide the letter dated 16th October 2015 which was received by the applicants' counsel on 21st October 2015. In that letter the respondent turned down the offer to open an account in Family Bank and suggested instead to open an account with the Housing Finance Corporation of Kenya. There is no further correspondences between the two advocates after that letter. From the communication between the advocates, it is evident that the parties never came to a consensus on which Bank to trade with. I also note that the applicants have attached a cheque in the name of the two counsels with the full decretal sum. It is therefore evident that the applicants took the necessary steps in fulfillment of the court orders, though they did not fully comply. The annexed copy of cheque is a show of good faith. I am therefore inclined to grant the orders as sought by the applicants.

6. In the premises, I hereby direct the appellant file an appeal within 5 days from today and the security be deposited within 21 days from the date of this ruling. Further, Orders for stay of execution to issue and taking into account the discord between the parties on the financial institution in which to deposit the money, I order that the same be deposited in court. In default the motion will be treated as having been dismissed. Costs of the motion to await the outcome of appeal.

Dated, Signed and delivered in open court this 20th day of November, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendants