



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL APPEAL NO. 13 OF 2014

VICTOR WARUI.....1ST APPELLANT

PAUL WERU THUMBI.....2ND APPELLANT

Versus

PETER KARIMI GIKOROI1ST RESPONDENT

DAVID MUNENE KARIMI2ND RESPONDENT

(Appeal arising from the Judgment of Hon. S. Ngungi Principal Magistrate Nyeri in Civil Case No. 95 of 2013)

RULING

1. By an application dated 25th March 2014 the applicant under order 42 rule 6 moved the court for an order of stay of execution of the decree and all consequential orders pending determination of this appeal.
2. The application was filed under certificate of urgency and supported by the affidavit of Paul Weru Thumbi in which he deponed that at the trial before the lower court no records from the Registrar of Motor Vehicles was produced and therefore the ownership of the motor vehicle registration No. KAG 211N as at the time of the accident was not known. It was further deponed that there was a pending inquest on the occurrence of the accident.
3. It was deponed that the respondents have no known stable means of income and therefore there was a likelihood that if the decretal sum is paid out and the appeal succeeds the same might not be recovered and that the applicants have an arguable appeal with high prospects of success.
4. On behalf of the respondent a replying affidavit was filed in which it was deponed that the judgment of the trial court was properly entered and that the respondent is a man of means who owns LR No. NYERI/ISLAND FARMS/532 measuring 2.77 Ha as well as motor vehicle registration No. KAS 701G Nissan Pick up and therefore the same can easily refund the decretal sum if the appeal succeeds.
5. It was further deponed that the decretal sum was for the use and benefit of the only child of the deceased and the decretal sum must be invested to the minor.
6. This application was certified urgent and temporary stay of execution given on condition that the decretal sum be deposited in an interest earning account in the joint names of the advocates for the parties.
7. At the time when the application was argued before me interpartes the applicant confirmed

having complied with the order of the court in respect of the deposit of the decretal sum.

8. In the matter before me the application has been brought without undue delay, the applicant has deposited the total decretal sum in the joint names of the advocates herein and there is no evidence that the appeal is being used to delay justice. It is also clear from the memorandum of the appeal that the appeal is arguable.

9. Since the suit appealed from involved a child as stated by the respondent in paragraph 7 of the affidavit in reply for whose benefit the money must be invested, I take the view that no prejudice will be suffered if stay of execution pending appeal is granted on the condition earlier stated.

10. I would therefore allow the application in terms of prayer number (3) three that is to say the judgment in Nyeri CMCC No. 95 of 2013 entered on 28th February 2014 decree and all consequential orders therefrom are stayed pending the hearing and determination of this application with cost of this application being in the cause.

Dated, signed and delivered at Nyeri this 31st day of July 2014.

J. WAKIAGA

JUDGE

Mr. Kiama for Mr. Kinyua for the Respondent.

Mr. Koech for Miss Karani for the applicant.

Court: Ruling read in open court in the presence of the advocates.

J. WAKIAGA

JUDGE