

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 32 OF 2014

GULLO RICHARD OTIENO.....APPELLANT

VERSUS

ROSELINE ANYANGO ODUOR & HELLEN AWINO ONYANGO (*suing as the legal representative in the estate of*) CHRISPINE OMONDI

ODUOR (DECEASED).....RESPONDENTS

R U L I N G

The notice of motion filed by the appellant dated 29-5-2014 seeking stay of execution pending appeal has been partially compromised by the consent of the parties herein dated 30-6-2014. In the said consent the parties agreed to have stay of execution pending appeal but were unable to agree on the issue of security and left it for the court to decide.

Order 42 Rule of the Civil Procedure Rules provides that where the court grants stay of execution pending appeal it equally has a discretion to order a provision of security pending the intended appeal.

The supporting affidavit of Lilian Munyiri depones that the respondents are persons of straw and should the entire decretal amount be paid then they shall not be able to pay back in the event that the appeal succeeds.

The question of whether to order for security although discretionary must be viewed from the position that neither disadvantages the appellant nor the respondent. The entire judgment is for the sum of Kshs. 777,850/= and cost of Kshs. 71,935/=. Putting all the factors constant I do order that:

- a. **The appellant do deposit the sum of Kshs. 600,000/= in a joint interest account of both the appellant and the respondent's counsel within the next 30 days from the date herein pending the hearing and determination of the appeal.**
- b. **The appellant do pay the agreed costs of Kshs. 71,935/= to the respondent within the next 30 days from the date herein.**
- c. **In default of (a) and (b) above the respondent be at liberty to execute for the full amount.**
- d. **Costs of this application to abide the appeal.**

Dated, signed and delivered at Kisumu this 23rd day of July, 2014.

H.K. CHEMITEI

JUDGE