

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 40 OF 2008

R N M.....APPLICANT

VERSUS

V M M.....RESPONDENT

RULING

1. The Motion dated 16th July 2013 seeks stay of execution of the judgment delivered on 7th June 2012 and the order given on 12th June 2013 pending appeal.
2. The applicant was aggrieved by the judgment of Nambuye J. of the 7th June 2012, whereupon she filed a motion for review which I dismissed on 12th June 2013. Being aggrieved of my decision she has given a notice of intention to appeal and has applied for certified copies of the proceedings and the ruling of 12th June 2013. She is apprehensive that the respondent may seek to recover the decretal sum before her intended appeal is heard and determined.
3. The respondent replied to the application vide an affidavit sworn on 15th October 2013. He states that he has not yet taken any steps towards enforcement of the decree. He further argues that there is no probability of success of the intended appeal and the appellant has not demonstrated that she would suffer substantial loss and damage if the judgment and decree were executed.
4. Both sides have filed detailed written submissions supported by authorities on stay pending appeal.
5. The suit is about property. Should the decree be executed there is likelihood had the property may be disposed of and thereby removed permanently from the reach of the appellant. That would no doubt occasion substantial loss to her. I note that the subject matter is immovable property; it never loses value. The respondent therefore would suffer no prejudice should stay be granted.
6. I am disposed to grant the orders sought in the Motion dated 16th July 2013. I do hereby grant the same in terms of prayer 3 of the Motion.
7. Stay of execution pending appeal is grantable on certain conditions, particularly as concerns due performance. Ultimately, if the appeal fails the respondent will be entitled to costs of the appeal. The respondent is entitled to assurance that the applicant will meet those costs. Consequently, I do hereby order that the applicant deposit in this court a sum of Kshs. 250,000.00 as security for costs. If the said sum shall not have been deposited in the next thirty (30) days of the date of this ruling, the order made in paragraph 6 hereinabove shall automatically lapse.
8. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF November 2014.

W. MUSYOKA

JUDGE

In the presence of Miss. Ingonga for Mrs. Thongori advocate for the applicant.

In the presence of Mr. Kuloba for respondent advocate for the respondent.