

REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Appeal 236 of 2012

NELLIE NJUGUNA & TONY NGUGI

(Suing as the Chairperson & Secretary

respectively,

of KAPUTEI GARDEN ASSOCIATION) .

.....APPLICANTS/APPELLANTS

VERSUS

1. NADEEM

BUTT. 1ST RESPONDENT

2. CITY COUNCIL OF

NAIROBI. 2ND RESPONDENT

R U L I N G

The application before the court is a Notice of Motion dated 16th May, 2012 and filed by the Appellant who was the Plaintiff in the court below. He sought a stay of execution of the lower court's orders found in a ruling dated 26th April, 2012, pending the hearing and final determination of this appeal. The certified copy of the ruling or order was not annexed to this application as mandatorily required by the relevant law. It is, therefore, not possible to know and properly appreciate the true nature and contents of the impugned order. It is trite law that where a certified copy of such order is not annexed to the application before the court, the application is rendered fatally incompetent and liable for striking out or dismissal.

Secondly, the stay of execution sought by the Appellants is an order refusing and dismissing a lower court application which itself sought a stay. The lower court, as I understand it, did not make any substantive order capable of being executed by the Respondents. Put differently, the Respondents were not given any order which stands in their favour against the Appellants and which the Appellants may fail to comply with in the mean time rendering it liable for execution by the Respondents. In the above circumstances, this court would be acting in futility if it were to grant a stay. The court is not supposed to act in vain. Accordingly also, this application would clearly appear to have been brought in abuse of the process of court. It has wasted a lot of courts valuable but limited time.

Finally, I have carefully perused the whole appeal record, including lower court pleadings, submissions, affidavits and other related documents. The honourable trial magistrate in my view, took account and considered all the material before him before he refused to grant the stay sought before that court. This court has also considered the same and has come to conclusion, with great respect, that the chances of success of this appeal are, on the face of things, very limited. For that reason, I find no merit in protecting the appeal since at the end of the day, the Applicant/Appellant, will not likely suffer, much damage or

loss, if the order of stay sought is not granted.

The application is therefore, struck out and dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 19th day of March, 2013.

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**D A ONYANCHA
JUDGE**