

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLICATION NO. 35 OF 2012

STEPHENE GITAHU 1ST APPLICANT

STEGI BUILDING CONSTRUCTION LTD. 2ND APPLICANT

V E R S U S

BOAZ ADAGALA LUMWAGI

T/A BOADA INVESTMENT RESPONDENT

R U L I N G

The applicant filed an application dated 11.7.2012 seeking leave to appeal out of time as well as stay of execution of the decree in Kakamega CMCC No.542 of 2010. The applicant was granted a stay of execution of 30 days. On 19.12.2012 he filed an application seeking to extend the period by another 90 days or in the alternative he be allowed to provide a Log Book as an alternative security instead of depositing the decretal sum. The application is supported by his affidavit sworn on the same date. Parties agreed to rely on the documents on record. The respondent filed an affidavit sworn on the 25.2.2013.

The applicant's contention is that he would like to have the period he was given to deposit the decretal sum increased by a further 90 days. On the 22.2.2012 the court granted an interim order of stay pending the hearing of this application. Since then the 90 day period requested by the applicant has elapsed and if his request was genuine he should have deposited the decretal sum as of now. The issue of providing an alternative security is rejected. I have gone through the pleadings before the trial magistrate and I do find that allowing an alternative security is not appropriate in this case. The initial application for stay of execution was done way back in July. The judgment of the trial court was delivered on 18.5.2012 and it is now over one year since then. The applicant has had ample time to settle the debt.

In the end, I do find that the application dated 19.12.2012 lacks merit and the same is hereby dismissed with costs to the respondent.

Delivered, dated and signed at Kakamega this 13th day of June 2013

SAID J. CHITEMBWE

J U D G E