

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 7 OF 2003

MUGURE MAHINDA.....APPELLANT

VERSUS

ALI MOHAMED FARAH.....RESPONDENT

RULING

By an application dated 20th May 2011 and filed on 23rd May 2011, the Applicant sought a stay of execution of the decree to sell the Applicant'S land known as Nakuru/Municipality/219 to satisfy the decree in Nakuru CMCCC No. 2536 of 1999 which was made on 13/12/2002.

The grounds for staying execution of decree are set out in Order 42 rule 6(1) & (2) of the Civil Procedure Rules 2010. Rule 6(1) provides that no appeal or second appeal shall operate as a stay of execution. In order for a stay of execution to be given, the conditions set out in rule 6(2) must be fulfilled. These are -

(a) *substantial loss may result to the applicant unless the order is made, and that the application has been made without unreasonable delay.*

(b) *such security as the court orders for the performance of such decree or order as may ultimately be binding on the applicant.*

Mr. Mindo (*counsel for the Applicant*) argued that there is security for due performance by the applicant of her obligations. The amount of security was not stated.

Mr. Gekong'a, counsel for the Respondent, opposed the application. His case is that this matter commenced way back in 1999. It was determined on 13/12/2002. The Applicant applied and was granted orders to pay the decretal sum by instalments. The Appellant paid one instalment and stopped. It is now over 13 years since the accident occurred and over ten years since the orders were made, that the Respondent should be allowed to enjoy the fruits of the judgment, that there is no merit in the application, that the security is grossly inadequate, and that the application should be dismissed unless half of the decretal sum is deposited in court.

I have considered these rival arguments. The intended appeal is against my Ruling delivered on 6th May 2011 on an application for review of a Ruling of my senior brother Hon. Maraga J., (*as he then was*), (*now Judge of Appeal*), dismissing the Applicant's Appeal. It has absolutely nothing to do with the sale of land to secure payment of the decretal sum. To that extent therefore the application for stay of sale of the Applicant's land is misconceived and is a calculated abuse of the court process.

I see no merit in it and dismiss the same with costs to the Respondent.

It is so ordered.

Dated, signed and delivered at Nakuru this 27th day of January, 2012

M. J. ANYARA EMUKULE
JUDGE