

ROSE WANJIRU NJERU.....PLAINTIFF

VERSUS

WATER RECYCLING LIMITED.....DEFENDANT

RULING

Following the judgment of this Court delivered on 22nd July 2009 the Defendant filed an application seeking stay of execution of the decree pending hearing and determination of an appeal. The application was filed by way of Chamber Summons dated 28th August 2009. On the same date the court granted an interim stay of execution pending *inter partes* hearing. The interim orders were extended and are still subsisting.

The Plaintiff did not file a Replying Affidavit but filed written submissions. The defendant also filed written submissions. Ruling on this matter was fixed for 21st April 2010. I regret the delay in delivering the ruling. The delay was occasioned by factors beyond my control.

The Plaintiff/decree holder contends that that security must be provided for the stay as required by law. She favours an order directing the entire decretal amount to be deposited in a joint interest earning account. The defendant/judgment debtor on the other hand is asking that security be by way of Bank guarantee or any other security that the court may direct.

In an application for stay of execution under Order XLI rule 4 the principles are well settled. Substantial loss must be demonstrated and security for the due performance of the decree must be provided. The court is then under a duty to exercise its discretion as best as possible to ensure that the intended appeal if successful is not rendered nugatory. The discretion should not be exercised in such a manner as to render an appeal nugatory. In the exercise of my discretion I order that there will be a stay of execution of the decree of this Honourable Court pending hearing and determination of an appeal from the judgment of this court delivered on 22nd July 2009.

The judgment debtor/ Applicant shall deposit the entire decretal sum of Kshs. 1,236,469.35 in a joint interest earning account of the parties advocates within 30 days of the date of this Order and in default the order of stay of execution shall stand vacated and execution shall issue. It is so ordered.

Dated AND Signed At Nairobi ON This 2ND Day Of AUGUST 2012.

M.K IBRAHIM
JUDGE

Dated and Delivered at Mombasa on This 28TH Day Of AUGUST 2012.

J.W. MWERA
.....
JUDGE

Delivered in the presence of:

N/A Ruling delivered. Parties to obtain copies from the DR.