



SOUTH NYANZA SUGAR CO. LTD.....APPELLANT

-VERSUS-

FREDRICK ODOYO MATUNGA.....RESPONDENT

RULING

The applicant has filed the instant application seeking stay order against execution arising out of a decree in CMCC No. 56 of 2004. Judgment was delivered on 28th September, 2011. Immediately thereafter the appellant made an application for stay of execution before the lower court. The application was dismissed by the lower court on 30th November 2011, prompting the applicant to file the present application dated 5th December, 2011 before this court on 7th December, 2011. Before the application could be heard inter-partes, the respondent moved to execute and caused warrants of attachment to be issued to **Omwoyo Auctioneers**. The respondent's action prompted the applicant to file another application dated 9th December, 2011 seeking to stop the attachment and sale of its goods by the respondent. A temporary stay was granted by this court pending inter-partes hearing.

The application is opposed by the respondent. In his replying affidavit dated 27th February, 2011, **Mr. Oduk Advocate** for the respondent, has opposed the stay on the basis that the applicant had been required to deposit the full decretal amount which he failed to. This was pursuant to a consent order recorded in court by the parties on 7th June, 2010. The respondent contends that the applicant is seeking to challenge the decree through the present application.

When the application came before me, parties consented to canvass the same by way of written submissions. I have carefully considered the submissions and the record.

The applicant has argued that his appeal will be rendered nugatory if the stay is not granted and that the respondent decree-holder is a man of straw incapable of effecting a refund should the appeal succeed. He has also expressed willingness to abide by any conditions set by the court.

The respondent on the other hand has submitted that the applicant has not honoured the terms of consent entered by the parties earlier in which was to pay the decretal sum within 30 days of the 7th June, 2010 and that it subsequently failed to show cause why execution would not issue. Having considered the rival submissions and the record, I allow the application in the following terms:-

- 1. The applicant shall pay the respondent One hundred and fifty thousand shillings (kshs. 150,000) as part payment of the outstanding decretal amount within 30 days.*
- 2. The applicant shall deposit into court the balance of the decretal amount within 30 days.*
- 3. The applicant shall execute security for costs within 30 days.*
- 4. The stay order shall automatically lapse if any of the above conditions are not met and further if the applicant will not have prosecuted the appeal within one year.*

5. *Costs of the present application will be borne by the applicant.*

It is so ordered.

Ruling dated, signed and delivered at Kisii this 23rd day of August, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

Edwin Mongare court clerk

..... Counsel for the appellant

..... Counsel for the respondent

R. LAGAT-KORIR
JUDGE