



REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 63 of 2012

PETER OKWAKO MURWAAPPELLANT/APPLICANT

A N D

SYLVANUS EMMANUEL WALUTSACHI RESPONDENT

(AN APPLICATION FOR STAY OF EXECUTION OF DECREE PENDING APPEAL)

R U L I N G

The application dated 9.7.12 seeks orders for stay of execution of the decree herein pending the hearing of the appeal.

The application is supported by the affidavit of PETER OKWAKO MURWA the appellant/applicant sworn on 9.7.2012.

The applicant's case as per the evidence of the supporting affidavit is that the respondent sued him for a balance of the purchase price for the sale of a parcel of land. The balance is reflected by the applicant as Kshs.58,000/= . The applicant contends that before the bill of costs was assessed, the applicant was arrested and committed to civil jail. The applicant has further averred that he suffers from a chronic heart condition and high blood pressure.

In opposition to the application, the respondent, SYLVANUS EMMANUEL WALUTSACHI filed a replying affidavit sworn on 17.7.12. In the said affidavit, it is contended that the applicant has come to court with unclean hands since he has failed to pay the decretal sum. It is further stated that the applicant was committed to civil jail after due process. The respondent has also stated that there is no evidence that the applicant suffers from any chronic disease.

It is clear from both affidavits that the applicant has not paid the entire decretal sum. The application for execution exhibited by the respondent reflects the outstanding amount as Kshs.71,751.40cts. The decree and the Certificate of costs were duly issued (annexture SEW"4").

However, committal to civil jail violates the provisions of Article 11 of the international convention on civil and political rights which was ratified by Kenya forms part of the Kenyan law. Article 2 (6) of the Constitution of Kenya stipulates as follows:-

“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

The applicant is therefore entitled to seek ways of bettering himself. If the applicant is committed to civil

jail, his freedom even to seek ways of repaying the debt will be curtailed.

In arriving to this conclusion, I am persuaded by the reasoning of M. K. Koome, J (as she then was) in the following authority:-

IN THE MATER OF BANKRUPTCY ACT CH.53 LK
RE ZIPPORAH MATHARA (2010) eKLR.

The application is allowed on the condition that the applicant do deposit security of Kshs.100,000/=. Costs of the application to the respondent.

Delivered, dated and signed at Kakamega this 22nd day of November, 2012

B. THURANIRA JADEN

J U D G E