



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL APPEAL NO. 115 OF 2010

RACHAEL KOROSAPPLICANT/APPELLANT

VERSUS

JUDY NYAMIRA RUIRERESPONDENT

(Suing as the legal representative of the Estate of Ndemi Mugane)

[An Appeal arising from the Decision and Judgment of Honourable E.M. Nyagah – Principal Magistrate

delivered on the 18th day of December, 2009 in Kerugoya Chief Magistrate’s Court Civil Case Number 88 of 2009]

Between

JUDY NYAWIRA

RUIRE.....PLAINTIFF

VERSUS

RACHAEL

KOROSDEFENDANT

R U L I N G

Both Counsel in this matter entered into a consent on 3rd May, 2010 to the effect that the stay orders sought through the Notice of Motion dated 31st March, 2010 would be granted upon the Appellant depositing the decretal sum and costs amounting to KShs.413,193/= in an interest earning account in the joint names of both counsel within thirty (30) days from the date of the said consent.

By the expiry of the said thirty (30) days, the said order had not been complied with. Before the account could be opened as per the court order, the order had already lapsed. This necessitated counsel for the Applicant herein to file the application dated 9th June, 2010 seeking an extension of the said order. In his

affidavit in support of the application, he has rested the blame for the delay on the other counsel's feet. It will not be necessary for me to repeat those unfortunate averments here, I can only say that Mr. Kiama did explain the situation and I was satisfied at the end of the day that the situation was created as a result of a genuine misunderstanding between the two (2) counsel and an element of mistrust in each of them. I have considered the application along the rival Affidavits. I have taken account of the reasons given for the delay and given the date the cheque was dispatched to counsel by the Insurance Company, it would still not have been possible to meet the deadline given in the order.

It is my considered view that the consent order was meant to serve the ends of justice. It was in the interests of both parties and although the same has since lapsed, I am convinced that all is not lost and the same good spirit and kind intentions between both counsel can be restored. I will extend the time for compliance with the court order in question by a further fifteen (15) days from the date of this ruling. There being no fraud or misrepresentation alleged or proved, I do not see any reason as to why I should vacate it or otherwise change its terms.

The terms of the order dated 3rd May, 2010 will therefore remain the same save for the parties being given another fifteen (15) days to comply failing which the Decree holder will be at liberty to execute the decree.

W. KARANJA

J U D G E

DELIVERED AND DATED AT EMBU THIS 15TH DAY OF MARCH, 2011 BY THE
UNDERSIGNED.

M. WARSAME

JUDGE