

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. CIVIL APPL. NO.105 OF 2011

JANE WAMBUI NGANGA RESPONDENT

VERSUS

JOHN NDEGWA MAINA APPLICANT

RULING

John Ndegwa Maina, the Appellant, took out the motion dated 30th June 2011 in which he prayed for a stay of the execution of the warrant of arrest and or the order for committal to civil jail issued by Honourable E.J. Osoro, learned Senior Resident Magistrate, pending the hearing and determination of the intended appeal. The motion is supported by the affidavit of the Applicant Jane Wambui Ng'ang'a, the Respondent herein filed a replying affidavit she swore to oppose the motion.

It is the submission of the Applicant that he was committed to civil jail for 30 days. That committal order according to the Applicant is unconstitutional since it is against the universal Declaration of Human Rights. The Respondent on the other hand is of the view that the committal order did not breach any constitutional right of the Applicant since the applicant has avoided to meet his obligation to settle the decree. The applicant has further sought for an order of stay pending appeal. It is his submission that unless the order is granted his appeal will be rendered nugatory.

I have considered the material placed before me and the rival submissions. There is no dispute that a committal order has been issued against the applicant to compel him settle the decree. Under section 40(1) of the Civil Procedure Act, the law recognizes the committal to civil jail of a judgment debtor as one of the methods of execution. The consequence of such a move is to take away applicant's civil liberties guaranteed by the constitution. It cannot by any stretch of imagination be stated that section 40 of the Civil Procedure Act is unconstitutional by dint of the application of International Convention on Civil and Political Rights which states that no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation. There is doubt whether the judgment against the applicant arose out of a contractual obligation. It would appear from the material placed before this court that the judgment is in respect of damages for injuries suffered in a road traffic accident involving the Applicant's motor vehicle. I do not think the constitution intended to shield parties from meeting their legal obligations to settle the decree or court orders. The Applicant does not allege that he is unable to pay the decretal sum. It seems he is merely using the motion herein to frustrate the execution process. In my view the Applicant's constitutional rights have not been breached.

The Applicant has also asked to be given an order of stay pending appeal. He has argued that if the order for stay is not given then his intended appeal will be rendered nugatory. I have considered this submission and I think the appeal would be rendered nugatory if the order is not granted, in that he will have served the 30 days jail term before the intended appeal is heard and determined. On this account I will grant the applicant the order for stay. The remaining question is what security should the Applicant give. The Respondent has proposed that the Applicant be ordered to deposit in court the decretal sum. The Applicant has raised no objection neither has here proposed any other form of security.

I hereby grant the order for stay as prayed in prayer 2 of the motion on condition that the Applicant deposits the decretal sum of Kshs. 646,785/= in an interest account in the joint names of the advocates herein within 30 days from the date hereof. In default the motion shall be deemed as having been dismissed.

Dated and delivered this 23rd day of September 2011.

J.K. SERGON
JUDGE

In open court in the presence of Chweya h/b for Mbutia for Respondent and Njenga h/b for Chigiti for the Applicant

J.K. SERGON
JUDGE