

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Appeal 146 of 2009

PAUL GATHARA.....APPELLANT
VERSUS
ATANASIO MURUIKI KINYUA.....RESPONDENT

RULING

In his Notice of Motion dated 8th July 2009 and brought under **Order 41 Rule 4(1) and (6)** of the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act** the appellant sought a stay of execution of the lower court decree until this appeal is heard and determined. He obtained an ex-parte of stay but before serving it his goods were attached. He returned to court with Chamber Summons dated 19th November 2009 brought under **Section 3** of the **Civil Procedure Act** and sought an order compelling the court broker to release his attached goods. He argues that if stay is not granted he will suffer great loss as the attached goods belong to his customers.

The respondent cannot hear of that. In his replying affidavit and the submissions by his counsel, he contends that the lower court decree was by consent but the appellant refused to pay the costs of the suit as ordered. The attachment of his goods is therefore in execution of order for costs. He says this is a frivolous appeal intended to delay the finalization of this matter.

The proceedings in the lower court have mysteriously disappeared from the court filed. I cannot therefore verify either of the parties' contentions. In the circumstances I allow this application on condition that the appellant deposits in court a sum of Kshs.20,000/- being approximately a half of the costs in that case. His attached goods shall be released upon deposit of that amount within 30 days failing which the execution shall proceed. The costs of this application shall be costs in the appeal.

DATED and DELIVERED this 17th day of June, 2010.

D. K. MARAGA
JUDGE.