



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL APPEAL 179 OF 2009

JOHN NJOGU NGUGI.....APPELLANT

VERSUS

DANIEL WARUINGI KABURU.....RESPONDENT

R U L I N G

1. By a Notice of Motion dated 16th April 2009, John Njogu Ngugi hereinafter referred to as the Applicant seeks an order of stay of execution of the decree delivered in Nairobi CMCC No 415 of 2008 pending the hearing and determination of an appeal which the Applicant has lodged.
2. The Applicant is a director and shareholder of Joristine Traders Kenya Ltd. He explains that a notice to show cause as to why execution should not be carried out was affixed on the door of the offices of the company. He noted that the execution sought was sale of property known as Ngong/Ngong/42250 which belongs to the Applicant. He instructed an advocate who lodged an objection to the attachment, However the court overruled the objection and allowed the attachment to proceed. The Applicant maintains that unless an order for stay of execution is issued he will suffer substantial loss as the execution will be carried out against him and not the company. The Applicant has exhibited a letter from the Registrar of Companies which confirms that the Applicant is a director and shareholder of the company.
3. Daniel Waruingi Kaburu, who is the Respondent to the application has sworn a replying affidavit in response to the application. The Respondent contends that the application is frivolous, vexatious and an abuse of the court process. He maintains that the Applicant was sued in his personal capacity and therefore the status of Joristine Traders or Joristine Traders Limited is irrelevant. The Respondent has exhibited an appearance entered in person by the Applicant in the CM's court after being served with summons to enter appearance.
4. The Respondent depones that contrary to the Applicant's assertions that he is not party to the proceedings, he did appear in court and gave a proposal for settlement of the decretal sum in instalment, which proposal was not honoured. The Applicant also exhibited admission of the debt made by the Applicant prior to the filing of the suit by the Respondent and criminal court proceedings wherein the Applicant was tried and convicted for the offence of obtaining by false pretences with intent to defraud the Respondent herein. The Respondent therefore urges the court to dismiss the application, contending that it is nothing other than an attempt to frustrate the execution of the decree against him.
5. I have carefully considered the application before me. It is apparent that the Applicant has not appealed against the decree subject of execution. It is also evident that the Applicant has not appealed against the order which was issued on 19/9/08 for him to pay the decretal sum. In the circumstances, there

is no justification for this court interfering with the execution of the decree.

6. Further the Applicant has not satisfied this court that he will suffer substantial loss. He has not shown that the Respondent is not a man of means and will not be able to reconstitute the decretal sum should the Applicant succeed in his appeal.

7. For the above reasons I find no merit in the application dated 16/4/09 and do therefore dismiss it with costs.

Orders accordingly.

Dated and delivered this 19th day of June, 2009

H. M. OKWENGU

JUDGE

Advocate for the appellant - absent

Advocate for the respondent - absent