

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Civil Appeal 16 of 2004

LOISE RUGURU KIMANI.....APPELLANT

VERSUS

NELSON NDEGE GATIMU.....RESPONDENT

RULING

Notice of Motion dated 28/11/2005 has been pending hearing until 11/12/2007. It is disclosed that prior to the filing this application the High Court (Justice Lenaola) had dismissed another application for stay. It is now sought to review that order of dismissal issued on 17/11/2004. Judgment was given on 16/3/2004.

I have considered the supporting and replying affidavits. The applicant says the decretal amount is approximately 700,000/= and the Respondent says that the Judgment was for Shs.424,800 out of which the applicant has never made any effort to pay any part. The record of Appeal was filed by Appellant) Applicant on 18/10/2005 but no steps have been taken by the Appellant to proceed to hearing of appeal.

It is my finding that there is inordinate delay on the part of the applicant and he does not deserve any orders of stay of execution of decree. Regarding the application for review it is also clear that the application was not made until after expiration of one year of the orders complained of. There is inordinate delay.

Upon perusing the grounds set down for review I find the requirements set down under Order LXIV CPC are not proved. Firstly the order upon which the review is sought is not drawn and attached to this application as demanded under Order 44 1 (1) CPC. Secondly no new and important matter now discovered is disclosed no mistake or error apparent on the face of record is disclosed and no sufficient reason is argued to warrant a review order. The issue of eviction was dealt with in the ruling dated 17/11/2004 together with other issues of substantial loss and security. It is clear the Applicant is guilty of inordinate delay in both cases and is not entitled to orders he seeks. It is also evident that the Applicant is bent on delaying the Respondent from enjoying the fruits of his lawfully entered Judgment which is an abuse of court process. The application has no merit and same is hereby dismissed with costs to respondent.

Dated this 12th February, 2008.

J. N. KHAMINWA

JUDGE

12/2/2008

Khaminwa – Judge

Njue – Clerk

Mr. Ndea for Kathungu

Respondent – present

Read in open court.

J. N. KHAMINWA

JUDGE