

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 520 of 2008

MATHEW MUGO APPELLANT

VERSUS

CHRISTOPHER O. KENYARIRIRESPONDENT

RULING

Mathew Mugo the appellant herein seeks an order for stay of execution of the decree in Milimani CMCC.No.5052 of 2007 pending the hearing and determination of the appeal. The appellant contends that his appeal has overwhelming chances of success, and unless the order for stay of execution is granted, the Respondent will execute the default judgment and the appellant will suffer substantial loss as the respondent will be denied an opportunity to be heard on his defence and his appeal will be rendered nugatory. The appellant contends that the respondent may not be able to refund the decretal sum if paid to him. The appellant has already deposited a sum of Ksh. 384,000/- into court as security.

The application is opposed by the respondent who contends that the appellant has not demonstrated the substantial loss which he stands to suffer if the execution proceeds. The respondent therefore urged the court to dismiss the application.

I have carefully considered the application, the affidavit in support and the submissions of counsels. The affidavits in support and in reply are both fairly lengthy because the parties have deponed at length on the disputed issues subject of the suit and the appeal. At this stage it is not for this court to go into the merits of those issues. Suffice to note that the appeal before the court is arguable and that this application has been brought without undue delay and the appellant has already provided security by depositing the decretal sum into court.

The appellant has also demonstrated to this court that the respondent's means is not known and the apprehension that he may not be able to refund the decretal sum if required to is not unfounded.

Accordingly, I allow the application and issue orders for stay of execution pending appeal on the following conditions:-

- 1) That the sum of Ksh. 384,000/- deposited in court by the appellant shall remain in court as security pending the hearing and determination of the appeal.
- 2) That the appellant shall file and serve a record of appeal within 90 days from the date hereof and take all action necessary to facilitate the speedy disposal of the appeal.
- 3) In the event that the appeal is not disposed of within 12 months from the date hereof, the order for stay of execution shall lapse unless otherwise extended by this court.
- 4) Costs shall be in the appeal.

Those shall be the orders of this court.

Dated and delivered this 18th day of November, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Kaburu holding brief for Kimondo for the appellant