

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 4 of 2007

(Being an appeal from the judgment and Decree of Hon. J. R. Karanja, CM Meru in CMCC NO.243 of 2006 delivered on 4th December, 2006).

MURANYA MUTIGAAPPELLANT

VERSUS

GERALD MURIRA

JULIUS KONGA

JANET NTARARA (All sued as officials of Thuura GBM Network)...RESPONDENT

RULING

The applicant's suit against the respondents having been dismissed by the lower court with costs to the latter, the said costs were assessed at Kshs.11,675/=. He has filed an appeal to this court. After the applicant failed to pay the costs, his properties were proclaimed hence this application to stay further execution.

The applicant has averred that should execution proceed the appeal shall be rendered nugatory and he will suffer irreparable loss and damage.

The respondents on their part have deposed, through the 1st respondent, that the applicant has conspired with his son who has filed an objection to attachment. They also argue that the applicant will not suffer any loss and that in any case the Self Help Group is capable of refunding the decretal sum in the unlikely event of the appeal succeeding.

In considering an application for stay the court must be satisfied that the applicant stands to suffer substantial loss; that the application for stay has been brought without unreasonable delay and finally that the applicant is ready to abide by any condition or order as to security.

What the respondents have set out to execute is their costs amounting to Kshs.11,675/= and, of course, the auctioneer's costs. The applicant is expected to demonstrate how he stands to suffer substantial loss if execution was to proceed.

He has merely stated that it will plunge him into irreparable loss and damage. That is not the kind of proof of loss envisaged in Order 41 rule 4 (2) (a) of the Civil Procedure Rules. On the other hand the respondents have asserted that they will, as a Self Help Group, be in a position to refund the amount in question. It was incumbent upon the applicant to rebut that averment by showing that the respondents are not capable.

Although the applicant has intimated his readiness to abide by any conditions as to security and even though this application was brought without unreasonable delay, I come to the conclusion that the applicant has not demonstrated how he is likely to suffer substantial loss.

In the result this application is dismissed with costs and the temporary stay is vacated.

DATED AND DELIVERED AT MERU THIS 18th DAY OF May, 2007

W. OUKO

JUDGE