

REPUBLIC OF KENYA

HIGH COURT AT EMBU

Misc Civil Appli 40 of 2007

GEOFFREY MUTHIKE WAMUYU.....APPLICANT

VERSUS

FLAVIAN MWANGI OMARI.....RESPONDENT

RULING

The applicant prays for stay of the execution pending appeal already filed. He is offering security of land. He was ordered to pay decretal sum but he has failed to do so. The security offered is not valued.

Upon considering the submission of counsel on both sides and upon reading the application, I find no good reason to grant orders sought. Already stay has been granted by the Trial court and the applicant has failed to comply.

I find no substantial loss demonstrated by the applicant. The security he offers is subject to other claim. For security under Order 41 rule 4 (2) it is to provide tangible security that the Respondent can be able to get hold of for the due performance of such decree or order as may ultimately be landing on the applicant.

I am not convinced here that the security offered is sufficient for that purpose.

I order that stay shall only be ordered on condition that the applicant shall deposit the total decretal amount in an account to be jointly operated by the two advocates for both parties such account to be opened in reputable bank an interest earning account. The deposit shall be made within the next 45 days failing which this order shall lapse.

Dated this 26th July, 2007.

J. N. KHAMINWA

JUDGE