

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 733 of 2005

STANLEY NJAU WAINAINA..... APPELLANT

VERSUS

MESHACK M. MUNYALO

BENJAMIN MWIKUA MUSYOKI.....RESPONDENTS

R U L I N G

This Notice of Motion, dated 22/9/05 under Order 41 Rule 4; Order 50 Rule 1 of the Civil Procedure Rules, and Sections 3A, 63(e), 79 (G) and 95 of Cap. 21, Laws of Kenya, seeks the following orders:

1.)
2.)Already spent
3. **Stay of execution of the Court order dated 31/8/05 in Kithimani – Yatta RMCC No. 134 of 2004, pending the appeal herein.**
4. **Costs to be in the cause.**

The application is on the grounds stated on the face of the Notice of Motion, and is supported by an Affidavit by Stanley Wainaina Njau dated 23/9/05.

In opposition, the Respondents, through their Replying Affidavit filed on 24/10/05 aver, **inter alia** that application lacks merit and is meant to delay the realization by the Respondents of their fruits of the judgement, and that the Respondent is a person of means and payment of the decretal sum would not render the appeal, if it succeeds, nugatory.

In the cause of the hearing of the application, it became clear that the applicant has not complied with the tenets of Order 41 Rule 4 of the Civil Procedure Rules, in that he has not offered any security, no shown that if the sum is paid to the Respondent, prior to the appeal, the same will have been put beyond the reach of the appellant as the Respondent is not a person of means. This is what is referred to in the Order and Rule above, a substantial loss.

After due perusal and consideration of the pleadings herein, and the submissions by counsel for both sides, this court rules as under:

1. **That application for stay pending appeal is hereby dismissed with costs to the Respondent and against the appellant/applicant for failure to meet the requirements of the law under which it is brought.**

DATED and delivered in Nairobi this 20th day of June, 2006.

O.K. MUTUNGI

JUDGE