

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
CIVIL APPEAL CASE NO. 100 OF 2001

PETER WACHIRA KABUGA.....APPELLANT

Versus

RACHEAL MUTHONI MURAGE.....RESPONDENT

RULING

Before me is Chamber Summons dated 23rd September 2004 where the main prayer states:

“THAT this Honourable Court be pleased to issue stay of execution of the judgment dated 10th June 2004 and/or any other proceedings relating to land parcel NARUMORU BLOCK 11/AGUTTHI/395 pending the hearing and determination of NYERI CIVIL APPEAL NO. 206 OF 2004.”

Mr. Kebuka Wachira, Counsel representing the Applicant has said that Nyeri Civil Appeal No. 26 of 2004 is a case in the Court of Appeal.

It was me who delivered the judgment dated 10th June 2004 and looking at it today, I cannot imagine how that judgment can be executed. It was simply a dismissal of the Applicant’s appeal and that was all. Unless the Applicant is talking about costs of the appeal, I do not understand him; and if he is talking about those costs, they were taxed by the Deputy Registrar who went on to grant a stay of his taxation order twice at the request of the Applicant who does not therefore deserve any further stay on the payment of those costs. If that is the stay the Applicant now wants before me, he should be clearer as that is a stay of the Deputy Registrar’s taxation order and not a stay of the execution of my judgment dated 10th June 2004.

In any case, payment of those costs to-day by the Applicant does not make his appeal in the Court of Appeal a nugatory and the Applicant has not proved that the Respondent will not be able to refund those costs if the Applicant succeeds in his appeal in the Court of Appeal. It follows that even if this application were for a stay of the Deputy Registrar’s taxation order, the application lacks merits and the same cannot stand. In the circumstances, this application whether for a stay of execution of the judgment dated 10th June 2004 or the Deputy Registrar’s taxation order, has no merits and the same is hereby dismissed with costs to the Respondent.

Dated this 12th day of May 2005.

J. M. KHAMONI

JUDGE