

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1018 OF 1990

BENSON KAMAU MUNGAI PLAINTIFF

VERSUS

GICHOHI MACHARIA & 2 OTHERS DEFENDANT

RULING

The original suit in this case was a running down matter. It was filed sometime in February 1990. The full trial was commenced on 12.3.96 before Ringera J and on 11.6.97, before Juma J, who continued with the said proceeding and delivered judgement, on the 9th October 1997.

The two defendants filed their notice of appeal challenging the award of almost Ksh.1.3 million to the plaintiff. The two defendants nonetheless did not apply for a stay of execution of the courts orders. It was only when the plaintiff moved the court on execution proceeding that the two defendants filed their application for stay.

The advocate for the 1st defendant - Mr. P.K. Murithii claims that the plaintiff is a man of straw and may not be able to pay back the money in the event the appeal is allowed. The advocate for the 2nd defendant Mr. Agayo stated that he supported the submissions but that he was further ready to give security.

The application was strongly opposed by the respondent, through their advocates. She stated the rules as laid down in the case law of:- Kenya Shell Ltd.

v

Benjamin Karuga Kiburu & another CA NA 97/86 and Vallbhdas Raghvji Jethwa

v

Ghashikant Zaverchand Vaghji Shah t/a Supreme Styles CA No. Nairobi 26/89 had not been met by the two defendant.

Further they were guilty of latches.

I find that the applicants have taken almost a considerable amount to bring this application. They claim that this is due to the delay of proceeding. No certificate of delay or letter from the courts has been exhibited that this is the case. I have only sight of letters written to court.

Nonetheless, I shall allow this application both defendants but on conditions, namely:- i) That there be a stay of execution pending the appeal to the court of appeal.

ii) That the defendants each severally deposit the decretal amount of Ksh.1,030,000/- in an interest bearing account in the names of the three advocates. In a reputable bank or finance institution. The two defendants to pay their respective portion of 40%:60% ratio as found by the court.

iii) That this payment be made within 21 days of this order failure to the orders for stay lapse and execution to issue. Dated this 16th day of June, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE