



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 236 'A' OF 2013

THE METHODIST CHURCH OF KENYA REGISTERED TRUSTEES ...APPELLANTS

VERSUS

DAVID MWEBIA MUTHAMIA.....1ST RESPONDENT

M'INOTI M'MWARI.....2ND RESPONDENT

HELLEN MWARI3RD RESPONDENT

BISHOP J. MUKU4TH RESPONDENT

JOYCE J. KINOTI5TH RESPONDENT

JAMES KIBITI6TH RESPONDENT

RULING

1. The appellant seeks stay of execution of the certificate of costs issued on **6.5.2020** pending the hearing and determination of **Nyeri Civil Appeal No. 315 of 2019**.

2. The application is supported by an affidavit sworn on 11.9.2020. The reasons given are the bill was taxed despite the pendency of an appeal against a ruling made on 25.9.2019; there is an impending execution of the costs, the appellants will suffer substantial loss and there has been no unreasonable delay in filing this application.

3. The respondents oppose the application through a replying affidavit sworn on 6.10.2020 on the grounds that there has been non-compliance with the decree, similar applications for stay have been dismissed, no substantial loss has been demonstrated, lower court costs of **Kshs. 486,675/=** have not been paid, no demonstration has been made that they are incapable of refunding the amount if paid and there has been inordinate delay in prosecuting the appeal.

4. **Order 22 Rule 22** under which the application is made provides where a decree has been sent to a court to execute and if there is sufficient cause to issue stay for a reasonable time to enable the judgment debtor apply to the court by which the decree was passed or to any court having appellate jurisdiction in respect of the decree. In granting such an order the court may seek for security or impose such conditions upon the judgment debtor as it thinks fit.

5. In **National Industrial Credit Bank Ltd. –vs- Aquinas Francis Wasike & Another [2006] eKLR** the Court of Appeal held:-

“This court has said before and it could bear repeating that while the legal duty is on an applicant to prove the allegation that an appeal would be rendered nugatory because a respondent would be unable to pay back the decretal sum, it is unreasonable to expect such an applicant to know in detail the resources owned by a respondent or lack of them. Once an applicant exposes a respondent would be unable to pay back the decretal amount, the potential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge.”

6. The decree appealed against was issued on 25.9.2019. One of the orders sought in the application dated 1.4.2019 was for stay of the decree of **Meru Chief Magistrate’s Court Suit No. 349 of 1999** and a review or setting aside the court’s order of 20.11.2019 dismissing the appeal. The court determined the application and rendered its ruling on 25.9.2019.

7. Subsequently, the applicant filed another application dated 13.5.2019 which was dismissed on 25.5.2019. The court declined to grant any stay and ordered the file be marked as closed. As if that was not enough another application dated 11.9.2020 was filed seeking similar orders.

8. Given the foregoing, it is evident the issues raised in the instant application have been determined by this court.

9. Be that as it may the applicant has not shown the respondents are incapable of refunding the decretal sum if it were to be paid to them.

10. Secondly the applicant has offered no security for the due performance of the decree.

11. In view of the above, I find no merits in the application. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 8TH DAY OF DECEMBER, 2021

In presence of:

No appearance for parties

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE