



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 55 OF 2020**

**JORAM MARANGU MWIRICHIA.....APPLICANT**

**VERSUS**

**JOSHUA NYAGESERO KARATA.....RESPONDENT**

**RULING**

1. On 12/03/2020, this Court gave a ruling on an application by the Applicant herein, Joram Marangu Mwirichia. That application sought two main prayers: leave to file an appeal out of time and a stay of execution of the Lower Court judgment in ***Nakuru CMCC No. 1322 of 2016***. The Lower Court judgment was delivered on 27/08/2019.

2. In its ruling dated 12/03/2020, the Court gave the following orders:

*I. The Applicant is granted leave to file his Appeal out of time.*

*II. The Applicant shall file and serve a Memorandum of Appeal within seven days of the date hereof.*

*III. The prayer for stay of execution of the judgment and decree issued in the Lower Court is declined.*

*IV. The Applicant shall satisfy the entire decretal amount within thirty days of today failure to which execution to issue.*

3. On 25/06/2020, the self-same Applicant brought a new Application dated 24/06/2020 with the following prayers:

*1) That this Application be certified as urgent and be heard ex parte in the first instance.*

*2) That there be a stay of execution of the judgment and decree arising out of the Nakuru CMCC No. 1322 of 2016 pending the hearing and determination of this Application.*

*3) That the Honourable Court be pleased to enlarge/extend the time with(in) which to deposit the decretal sum in a joint interest earning account by 21 days.*

*4) That costs of this Application.*

4. The Application is perplexing. It seeks extension of time to deposit the decretal amount in an interest earning account in order to benefit from a supposed stay of execution of the judgment and decree. It is perplexing because the orders of 12/03/2020 expressly declined to grant a stay of execution except for a limited time of thirty days. The Court explicitly required the Applicant to satisfy the decretal sum within thirty days of the ruling. The Court reached that conclusion after making a finding that the Applicant had not demonstrated that he will suffer irreparable injury if the stay is not granted.

5. It may be that the parties misunderstood the ruling of 12/03/2020 because the Respondent, it appears, has proceeded from the understanding that the Court had, in fact, ordered a stay on condition that the decretal amount is deposited in an interest-bearing account in the name of both parties. It is unclear to me where the provenance for this misperception lies. The fact, though, is that the Court did not order any such stay.

**6. Consequently, the Application as filed and argued cannot be granted. No stay of execution was granted on 12/03/2020 except for a limited period of thirty days. No stay can or will be granted now. The Respondent has been waiting for the fruits of his judgment for**

so long. It shall be satisfied within seven (7) days of today otherwise execution to issue.

7. The Applicant shall also pay the costs of this Application.

8. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 1ST JULY, 2021

.....

JOEL NGUGI

JUDGE

**NOTE:** This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.