

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CIVIL APPEAL NO. E055 OF 2021

JACOB MWANGI KIORIA.....1ST APPELLANT/APPLICANT

GRACE WAKANYI MWANGI.....2ND APPELLANT/APPLICANT

VERSUS

GILBERT KURIA IRUNGU.....RESPONDENT

RULING

The two applicants have brought this Notice of Motion dated 29th September 2021 seeking, *inter alia*, to set aside the Judgment and decree of the lower court in Kajiado CMCC 150 of 2019 delivered on 15th September 2021 pending the hearing and determination of this Application and the Appeal herein, as well as to have the court allow the Applicants to furnish the court with Security in the form of a Bank Guarantee from Diamond Trust Bank (DTB). The matter came today for directions. Ms Onacha appeared for the Applicants while Mr. Maina appeared for the Respondent. Both counsel informed that court that they have discussed the matter with a view to reaching a workable agreement. Counsel for the Respondent contemplated conceding to the Application for stay on certain conditions which the two could not agree on. Ms Onacha prefers having her client provide security by way of a Bank Guarantee while Mr. Maina prefers that the Applicants pay decretal amount to the Respondent to be deposited in an interest earning account held by both counsel. The further agreed to have the Applicants file Record of Appeal and set the Appeal down for hearing within 60 days. Because they could not agree on the mode of security, they asked the court to intervene and give directions.

I have considered this matter. In my considered view, it will save court's time to have this application disposed off in the manner proposed and agreed by both counsel. For this reason, and given that the only issue unresolved is the mode of providing security, I hereby mark the Notice of Motion dated 29th September 2021 settled in the following terms:

1. This court grants stay of the orders/decrees by the Hon. Principal Magistrate in Kajiado CMCC No. 150 of 2019 pending the hearing of the intended appeal herein.
2. The Applicants are ordered to furnish security by way of paying decretal sum which amount shall be deposited in an interest earning account held by the two advocates.
3. The Applicants shall within 60 days file and serve the record of appeal and set the same down for hearing.
4. Costs of this application shall follow the cause.

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 2ND NOVEMBER 2021.

S.N.MUTUKU

JUDGE