

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 99 OF 2019

PROTECTIVE CUSTODY LIMITED.....APPELLANT

VERSUS

JOSEPH MUMIA NDUBI.....RESPONDENT

RULING

1. The application that I am called upon to determine is the Motion dated 14th October 2019, which seeks stay of the decree and all consequential orders made in Kakamega CMCCC No. 220 of 2018, pending the hearing and determination of the instant appeal.
2. The Motion was brought under certificate of urgency, and was placed before the Judge on duty on 15th October 2019. The Judge made a finding that stay of execution was merited. In view of that finding, it would be academic for me to venture into the exercise of assessing the merits of the said Motion. The only thing outstanding, for me to deal with, is the terms of the stay of execution.
3. For avoidance of doubt, the order, recorded on 15th October 2019, says:

“I have perused and considered the application dated 14/10/19. The same is certified as urgent. The respondent has proclaimed the applicant’s property in execution of the decree. I am of the view that a stay of execution is merited. Stay of execution is hereby granted pending the hearing of the application inter partes ...”

4. A copy of the decree that is the subject of the stay order has not been placed before me by either party. I have, though, seen, on record, a copy of a notice of entry of judgement, dated 21st March 2019, which indicates that the total judgement sum was Kshs. 525, 420.00, less costs and interests. There is also a proclamation of attachment, dated 9th October 2019, where the amount of decree is stated to be Kshs. 616, 903.00.
5. In the circumstances, I shall confirm the temporary stay orders granted on 15th October 2019, so that there shall be stay of execution of the decree of the trial court, to last the duration of the appeal herein. The said stay order shall be conditioned upon the appellant depositing, in court, a sum of Kshs. 300, 000.00, in the next fourteen (14) days of the date of this ruling, in default of which the stay order shall lapse automatically.

DATED, SIGNED and DELIVERED at KAKAMEGA this 14th DAY OF February 2020

W. MUSYOKA

JUDGE