



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC APPEAL NO. 57 OF 2019

**WUODGOT ODHIAMBO MIGOT “formally known as DAUDI ODHIAMBO MIGOT
name formally and absolutely renounced and abandoned vide gazette Notice No. 5013
of 18th July 2014” (enclosed hereto and MARKED WOM (1).....APPELLANT**

VERSUS

JEMIMA AKINYI OYARE.....DEFENDANT/RESPONDENT

RULING

Wuodgot Odhiambo Migot formally known as Daudi Odhiambo Migot hereinafter referred to as the Appellant has come to court for prayers that pending the hearing and determination of the appeal herein, the orders made on 21/8/2019 together with the itemed Bill of costs dated 22/1/2020 be stayed.

The application is based on grounds that if the order is not stayed, the appellant will suffer prejudice and that the appeal has high chances of success.

Lastly, that if the orders are not stayed, the appeal will be rendered nugatory.

In her response, the respondent states that the decretal amount as per now is Kshs. 112,800. She suggests that the amount should be deposited in court.

The relevant law in such application is order 42 Rule 6 (2) (a),(b) of the Civil Procedure Rules that provides:

“(2) No order for stay of execution shall be made under subrule

(1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

The Judgment was entered on 4/12/2019. This application was filed on 3/2/2020 approximately 58 days after judgment. Even if we remove 15 days of Christmas Vacation excluded in computation of time, we find a delay of approximately 40 days. I do find this to be an inordinate delay in this circumstances.

Moreover, the appellant has not demonstrated substantial loss if he pays the decretal sum to the respondent. It is the appellant’s burden to demonstrate that the respondent will not be able to refund the money if successful on appeal.

However, in the interest of Justice, I do allow the application with a rider that the appellant does deposit Ksh 112,800 and the taxed costs in court within 30 days of Taxation. Taxation to proceed as scheduled.

Costs of the application in the appeal. Orders accordingly.

DATED AND DELIVERED THIS 25TH DAY OF FEBRUARY, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

In the presence of:

Appellant in person

Respondent in person

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE