

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NUMBER 270 OF 2018

DAVID NJUGUNA.....APPELLANT/APPLICANT

VERSUS

BONIFACE MUNGAI.....RESPONDENT

RULING

The applicant was aggrieved by the decision of the lower court made on 25th May, 2018 in favour of the respondent whereby judgment was given in the sum of Kshs.1,562,000/-. Soon thereafter the applicant filed a Memorandum of Appeal on 19th June, 2018 disputing the findings of the lower court followed by the present application filed on 14th February, 2019.

The application seeks an order of stay of execution of the lower court judgment and also the release of motor vehicle registration No. KBE 252U attached in execution of the said judgment. The application is supported by an affidavit sworn by the applicant to which the respondent has filed a replying affidavit in opposing the application. I have on record the submissions by both parties.

I have considered the rival arguments and also the provisions of law cited by the applicant. It is the duty of the applicant to satisfy the court that he is entitled to the orders sought in view of the provisions of Order 42 Rules 6 of the Civil Procedure Rules. The Memorandum of Appeal was filed timeously and the respondent has not shown what prejudice has been caused to him even considering the present application was filed months later.

The orders sought by the applicant are discretionary which discretion shall be exercised judicially. The court has to balance the interest of the parties to the dispute. Whereas the applicant has the right of appeal, the respondent has a judgment in his favour which he wishes to execute. The court also has to consider whether or not there is an arguable appeal as presented in the Memorandum of Appeal following the judgment.

The applicant has offered to post security which is one of the requirements under Order 42 Rule 6 of the Civil Procedure Rules. Having considered the material provided, I am inclined to allow the application provided that the applicant deposits the sum of Ksh.1,000,000/= in an interest earning account in the names of the advocates appearing for the parties. This shall be done within 30 days from the date of this ruling. The applicant shall also pay the auctioneers charges if this has not been done, upon which the warrants of attachment shall be lifted. The costs shall be on appeal.

Dated, signed and delivered in Nairobi this 11th day of July, 2019.

A.MBOGHOLI MSAGHA

JUDGE