

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISCELLANEOUS CIVIL APPLICATION NO. 137 OF 2018

ALFRED MAMBO MBAI.....APPLICANT

VERSUS

CENTRIN KADOGO KHAEMBA (suing administrator and personal representative of the

estate of JOHNSTONE RANDARI WALUBIRI.....RESPONDENT

RULING

1. The applicant has moved the court by a Motion dated 24th August 2018, seeking:-
 - (a) Stay of execution of judgment and decree in Butere SPMCCC No. 81 of 2017; and
 - (b) Leave to appeal out of time.
2. The applicant's case is that the award of damages made in the judgement delivered on 14th June 2018 at the trial court, in his absence, was inordinately high. He was not informed of it timeously by his advocate and he desired to appeal. He avers that the insurers have settled half of the claim leaving the other half of the claim to him.
3. The application principally seeks stay of execution of a judgement and decree of the trial court. A copy of either the judgement or the decree has not been attached to the application. There is no proof that the court did deliver the judgement or pass the decree alleged. A court does not act blindly. It obliges the applicant, in such a case, to demonstrate to the court that such a judgement or decree does in fact exist, lest the court is made to act in vain. The fact that the reply by the respondent does acknowledge existence of such a decree does not absolve the applicant of the obligation to attach those documents
4. The applicant talks of being exposed due to the number of persons involved. It is not clear what he means by this in the absence of a copy of the judgement. The loss he is alleged to be exposed to, if that is what he means, cannot be assessed so long the decree that is likely to be executed against him is not attached.
5. Should leave to appeal out of time be granted? There is no evidence, or demonstration, that the judgement sought to be appealed against exists.
6. I am not persuaded that the Motion dated 24th August 2018 is merited. I hereby dismissed with costs.

DATED, SIGNED and DELIVERED at KAKAMEGA this 15th DAY OF November, 2019

W. MUSYOKA

JUDGE