

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CIVIL MISC. APPLICATION NO. 93 OF 2019

JAMES NGALA MBUVI.....APPELLANT/APPLICANT

AND

FAMILY BANK LIMITED.....1ST RESPONDENT

DARIUS WAMBUA KIMWELE T/A MULTI CONCEPT

AUCTIONEERS.....2ND RESPONDENT

R U L I N G

1. **James Ngala Mbuvi**, the Applicant approached this Court by way of Notice of Motion seeking a stay of execution of the Ruling dated **16th August, 2019** in **CMCC No. 366 of 2018** and any consequential orders arising therefrom pending hearing and determination of the Appeal.

2. The application is premised on grounds that: The Applicant being dissatisfied with the Lower Court's Judgment has already appealed against the whole Ruling; if the application is not allowed, the Applicant stands to suffer irreparable loss and grave prejudice or such loss stands to be suffered by the Respondents if the same is not allowed; and the Appeal has a high probability of success.

3. The Respondent filed grounds of opposition to the application where he urged that: the application discloses no reasonable cause of action; the Ruling the Applicant wishes stayed is not annexed which renders the application incompetent, the auctioneer's costs emanate from the consent recorded in Court by the Applicant and the 1st Respondent on **7th November, 2017** therefore he is estopped from denying compliance and the application has been brought in bad faith to deny the Respondent from enjoying fruits of his professional work.

4. At the hearing of the application, the applicant relied upon the grounds on the face of the application.

5. The purpose of stay of execution pending an Appeal is basically to ensure that the subject matter is preserved so that the Appeal is not rendered nugatory.

6. As clearly pointed out in the grounds of opposition, the impugned Ruling was not availed for consideration therefore this Court could not make a decision if it was worth being stayed.

7. In the premises, the application fails. Accordingly, it is dismissed with no orders as to costs.

8. It is so ordered.

Dated, Signed and Delivered at Kitui this 2nd day of December, 2019.

L. N. MUTENDE

JUDGE