



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CIVIL APPEAL NO. 125 OF 2019

BETWEEN

WILSON OCHOLA ONGELE.....APPELLANT/APPLICANT

AND

FELIX OTIENO OLUOCH.....1ST RESPONDENT

TITUS OCHIENG ODUOGI.....2ND RESPONDENT

RULING

1. By a notice of motion dated 01st November, 2019, and filed on 4th November, 2019, brought under Section 63 (e) of the Civil Procedure Act and Order 42 rule 6 of the Civil Procedure Rules, the Appellant/Applicant prays for orders **THAT:**

1) There be a stay of execution of the Judgment and Decree in NYANDO PMCC NO. 383 OF 2013 dated 12th October, 2019 pending the hearing and determination of this appeal

2) Costs be provided for

2. The application is based on the grounds among others that the Applicants' are aggrieved by the court's decision allowing their application dated 23.08.19 to set aside an interlocutory judgment on condition that they deposit the decretal sum of Kshs. 450,000/-.

3. The application is supported by an affidavit sworn by the Applicant on 01.11.19 in which he reiterates the grounds on the face of the application. Annexed to the affidavit is the decree in NYANDO PMCC NO. 383 OF 2013, notice of entry of judgment, bill of costs, certificate of urgency and notice of motion dated 23.08.19, the impugned order, memorandum of appeal, application for proceedings and the ruling and receipt in respect thereof marked WOO 1 to WOO 8 respectively.

4. The Respondents did not file a replying affidavit.

5. I have carefully considered the notice of motion *vis a vis* the supporting affidavit and the submissions filed on behalf of the both parties.

6. The Applicants have not annexed the impugned ruling and have therefore denied the court the opportunity to appreciate whether the interlocutory judgment that was set to be set aside was regular or not and whether the delay in defending the suit had been explained.

7. From the foregoing, I am incapable of faulting the discretion exercised by the trial court in ordering that the total decretal sum be deposited in court as a precondition for setting aside the interlocutory judgment.

8. In view of the foregoing, I find that the notice of motion dated

01st November, 2019, and filed on 04th November, 2019, has no merit and it is disallowed with costs to the Respondent.

DELIVERED AND SIGNED IN KISUMU THIS 10th DAY OF December 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant -

For Appellant/Applicant -

For the Respondents -