

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CIVIL APPEAL NO 15 OF 2018

DAUD MATHOBE HUD.....APPELLANT/APPLICANT

VS

MALIA TABA ABDI.....RESPONDENT

RULING

Before me is an application brought by way of Notice of Motion dated 2nd May 2018 filed by the applicant who described himself as appellant. The application was filed under section 1A, 1B and 3A of the Civil Procedure Act (Cap 21) and Order 40 Rule 1, 2 and 7 as well as Order 51 Rule 1 of the Civil Procedure Rules.

The main prayer is that pending the hearing and determination of this application the court do stay the execution of the judgment delivered by Hon M S Hassan Principal Kadhi on 25th April 2018 in Garissa Kadhi's Civil Case No 139 of 2018.

The application has grounds on the face of the Notice of Motion and was filed with a supporting affidavit sworn by the applicant on 2nd May 2018.

The application was opposed through a replying affidavit sworn by the respondent on 9th May 2018.

At the hearing of the application both the applicant and the respondent made oral submissions in court.

This application will fail for the simple reason that the prayer for stay of execution of judgment sought is for the period pending the determination of the application. In effect on delivery of this ruling the prayer will have been spent and this court cannot grant substantive orders that have not been sought.

It is also not clear from the record whether a proper appeal was filed and paid for. In my view therefore the best option available to the applicant is to expedite his intended appeal and ask the court to grant him a hearing date on priority basis.

As for the application herein it is hereby dismissed. Costs of the application will follow the decision in the appeal.

Dated and delivered at Garissa this 5th June 2018.

George Dulu

JUDGE