



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 394 OF 2015**

**LUKA CHARLES MUSUMBA.....APPLICANT**

**VERSUS**

**CHARLES MUNGE.....RESPONDENT**

**RULING**

1. The application dated 25<sup>th</sup> September, 2017 seeks order that there be a stay of execution of the judgment dated 20<sup>th</sup> July, 2017 and all consequential orders thereto pending hearing and determination of the appeal herein.

2. The Applicant is dissatisfied with the judgment delivered herein on 20<sup>th</sup> July, 2017 and has filed a Notice of Appeal. The Applicant is apprehensive that the Respondent may commence the execution process, hence the application herein. It is stated that the appeal has high chances of success and that the Applicant stands to suffer substantial loss as the Respondent may not be able to refund the decretal sum. The Applicant is ready to provide security for the due performance of the decree.

3. The application is opposed as per the grounds of opposition dated 24<sup>th</sup> October, 2017 which state as follows:

- 1. That the application is an abuse of due process of the law.**
- 2. That the application is frivolous and vexatious intended to deny the Respondent the fruits of litigation.**
- 3. That the application lacks merit.**
- 4. That the Intended appeal lacks and chance of success.**

4. The application was disposed of by way of written submissions.

5. I have considered the application, the response to the same and the submissions filed.

6. The conditions to be met in an application for stay of execution are set out in Order 42 rule 6(2) Civil Procedure Rules as follows:

**“No order for stay of execution shall be made under sub-rule (1) unless –**

**a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

**b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”**

7. Section 79G of the Civil Procedure Act provides that:

**“Every appeal from a subordinate court to the High Court shall be filed within a period of 30 days from the date of the**

**decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order. Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”**

(See also Section 59 of the Interpretation and General Provisions Act and Order 50 rule 6 Civil Procedure Rules and Section 3A Section 95 of Civil Procedure Act Cap 21 Laws of Kenya)

8. The application at hand was filed without unreasonable delay. The judgment was delivered on 20<sup>th</sup> July, 2017 and the application at hand filed on 2<sup>nd</sup> October, 2017.

9. The averments made by the Applicant that the Respondent may not be able to refund the decretal sum have not been controverted. That the Applicant is willing to deposit security.

10. To balance the competing interests of both parties, I exercise discretion and allow the application on condition that the Applicant do deposit the decretal sum in a joint interest earning bank account of the counsels for both parties herein or in court within 30 days from the date hereof.

**Dated, signed and delivered at Nairobi this 7<sup>th</sup> day of June, 2018**

**B. THURANIRA JADEN**

**JUDGE**