



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CIVIL APPEAL NO. 42 OF 2016

JOHN KIMANI WANDUMA.....APPELLANT

VERSUS

MARY WANJIRU WANDUMA.....RESPONDENT

RULING

1. The appellant prays for *reinstatement* of the interim order granted by the court on 2nd December 2016. The prayer is contained in a notice of motion dated 15th May 2018.
2. Learned counsel for the applicant conceded that the second limb of the notice of motion seeking to “*transfer of the appeal to the Probate and Administrative Division of the High Court at Muranga*” is futile. There is *no* such division; and, the appeal is already before this court. That prayer is meaningless and is hereby *struck out*.
3. The applicant’s learned counsel, *Mr. B. M. Muchoki*, has sworn a lengthy affidavit dated 15th May 2018. In a synopsis, he states that the appellant originally acted in person. He deposed that the appellant filed an earlier notice of motion dated 4th October 2016. The court granted the appellant an interim stay of execution *ex parte* on 1st December 2016.
4. He avers that due to “*lack of understanding*” the appellant failed to serve the motion for *inter-parties* hearing on the original date of 25th October 2016. I take that as an admission of ignorance of legal procedures. He lodged a further certificate of urgency on 25th November 2016. The court then granted him the interim stay I referred to.
5. The application was then scheduled for *inter-parties* hearing on 22nd May 2017. On the latter date neither the applicant nor the respondent appeared in court. The application was taken out of the cause list.
6. The painful reality is that the interim stay *lapsed*. It follows as a corollary that there is nothing to *reinstate*. The applicant, who is now represented by counsel, should have fixed the notice of motion dated 4th October 2016 for consideration of the prayer for stay *inter-parties*. Instead, learned counsel has filed a *fresh* motion for *reinstatement* of non-existent orders.
7. There has also been *tardiness*: the motion was presented on 15th May 2018; well over *one year* since the lapse of the interim order. The inordinate delay militates against the grant of any *discretionary* order.
8. For all those reasons the applicant’s notice of motion dated 15th May 2018 is *dismissed*. Considering the predicament the applicant finds himself in; and, in the interests of justice, I order that each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 10th day of July 2018.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

The applicant (his counsel absent).

The respondent (in person)

Ms. Dorcas and Mr. Kiberenge, Court Clerks.