



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 14 OF 2018

NICHOLAS KIURA.....APPELLANT/APPLICANT

V E R S U S

NJIRU M. RUMBIA.....1ST RESPONDENT

DOMINIC KATHURI NJIRU.....2ND RESPONDENT

(Suing as legal representatives of STELLA MUKAMI NJIRU – Deceased)

R U L I N G

1. This is an application dated 15/05/2018 seeking for stay of execution of judgment and decree on judgment delivered on 10/03/2018 in CMCC 31 of 2015 pending hearing and final determination of this appeal.

2. The grounds contained in the applicants affidavit are briefly that if the orders are not granted, the appeal may be rendered nugatory. The applicant has also extensively dealt with the issue of his appeal having high chances of success. It is deposed that the execution of the decree involves a substantial amount of Kshs.2,000,000/= which may result in substantial loss in the event that the appeal succeeds.

3. The application was opposed by the respondents on grounds that the requirements under Order 42 Rule 6 of the Civil Procedure Rules have not been satisfied.

4. However, the respondent states that should the court grant stay, it should make orders for security for performance of the decree which the applicant has not offered. He proposes that the applicant pays half of the decretal amount within 30 days of this ruling and the balance be deposited in an interest earning account within 60 days in the names of counsels for both parties.

5. The applicant in an application of this nature requires to satisfy the following:-

(a) That the application is brought without undue delay.

(b) That security be provided for the due performance of the decree.

(c) The application was filed within less than two months from the date of the deliver of the judgment. There is no undue delay in this regard and the respondent has no problem with the period within which the application was brought.

6. The second requirement has also been satisfied since the applicant has addressed it in his affidavit.

7. As stated by the respondent, the third requirement of providing a security has not been satisfied. However, the respondent did not oppose the granting of the orders provided that security is provided. This court has power to direct that the applicant provide such security.

8. The proposal of the respondent if considered may result in hardship or substantial loss on part of the applicant. This is for the reason that within 60 days, the applicant will have parted with the total decretal amount divided into two parts.

9. The applicant has a right to have his appeal determined and for his appeal not to be rendered nugatory, this court must grant reasonable conditions.

10. I find the application merited and I grant it in the

following terms:-

(a) That the applicant shall deposit half of the decretal amount in an interest earning account in the names of the counsels for the parties within 30 days.

(b) That the record of appeal be prepared and served and directions taken within 60 days to avoid delay.

(c) That costs of this application be in the cause.

11. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF JULY, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Njage for P.N. Mugo for Applicants

Mr. Ogweni for Respondents