

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 128 OF 2013

ELIZABETH WANJIKU ISAAC.....1ST APPLICANT

MICHAEL NTHIWA NTHENGE.....2ND APPLICANT

VERSUS

HARRISON KAMAU KINYANJUI.....RESPONDENT

RULING

1. The application dated 20th February, 2018 seeks orders that the Honourable Court be pleased to order that the monies deposited in the joint interest earning account No. 10060532058 in the names of Mutembei Gichuru & Co. and R.W Chege & Co. held at Faulu Microfinance Bank Limited be released forthwith to the law firm of Mutembei Gichuru & Co. Advocates.

2. It is stated in the grounds and the affidavit in support of the application that the decretal sum was deposited in court pending the hearing and determination of the appeal. That the appeal was determined on 8th February, 2018 through a judgment in favour of the Appellant/Applicant.

3. The application is opposed. It is stated in the replying affidavit that the costs herein are yet to be taxed and paid. That the Auctioneers costs of Ksh.48,073/= allowed way back on 25th June, 2014 are yet to be paid. That the Respondent's case has high chances of success and the Applicant has no known assets to meet the costs ordered herein. That the release of the funds held herein may be an impediment towards the execution of the decree that may be passed against the Applicant.

4. The Applicant filed a supplementary affidavit stating that the Respondent was only awarded throw away costs but costs of the appeal were to be in cause.

5. The application was disposed of by way of written submissions. I have considered the said submissions.

6. A perusal of the court record reflects that the decretal sum was deposited as a condition for the grant of stay of execution pending the hearing and determination of the appeal. The appeal was determined vide the judgment herein dated 8th February, 2018. The Respondent was awarded throw away costs with the costs of the Appeal being in cause.

7. The Auctioneers costs claimed by the Respondent have not been controverted but it is stated that the certificate of costs for the taxed auctioneer's Bill of Costs has not been extracted and served to ascertain the amount.

8. With the foregoing, I allow the application on condition that the throw away costs and the auctioneer's costs be paid. Parties to agree on the amount payable to the Respondent. In default the costs to be assessed.

Dated, signed and delivered in Nairobi this 19th day of Nov., 2018

B. THURANIRA JADEN

JUDGE