

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 635 OF 2010

EDWARD NGERA MWANGI.....1ST PLAINTIFF/RESPONDENT

PHILIS ROSE WAMBUI THUO.....2ND PLAINTIFF

VERSUS

VERONICA NDINDA KIMENDE.....DEFENDANT

RULING

On 3rd December, 2014 counsel appearing for the parties herein addressed Aburili J. in respect of an application dated 6th April, 2011 filed by the defendant. Counsel for the defendant asked for the hearing date and an interim stay of execution because he told the court there were warrants of arrest issued, I believe, against the defendant.

Aburili J. granted an interim order of stay of execution pending the hearing of the application on 5th February, 2015. On 5th February, 2015 both counsel appeared before the same Judge and after a brief address the matter was adjourned at the instance of the counsel for the defendant. The Judge however declined to grant any stay.

The application before me is dated 9th February, 2015 which sought among other orders that the interim orders that were vacated on 5th February, 2015 be reinstated. The other orders in that application have been spent. The reinstatement of the orders is opposed and grounds of opposition have been filed.

The application upon which the interim orders were first issued in favour of the defendant has never been prosecuted since it was filed on 6th April, 2011. This translates to more than five and half years since. Again, the stay was vacated two years ago yet, notwithstanding the fear of execution, the defendant has not taken any steps to prosecute the application.

It will defeat the ends of justice on both sides if the order sought is reinstated. I say so because litigation must come to an end, and I believe it behoves both parties to address the application dated 6th April, 2011 so that the parties may know where they stand. For those reasons, I decline to reinstate the interim orders and therefore the application dated 9th February, 2015 is dismissed with costs to the plaintiffs.

Dated, signed and delivered at Nairobi this 16th Day of February, 2017

A. MBOGHOLI MSAGHA

JUDGE