

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. CASE NO. 41 OF 2016

FRONANDIS NYONGESA BARASA APPLICANT

VERSUS

AGGREY MUCHAKA SAMWEL RESPONDENT

RULING

1. The application before court is by way of Notice of Motion dated 4th July, 2016 seeking for stay of execution pending an intended appeal and enlargement of time within which the appeal be filed.
2. The application is supported by an affidavit and grounds that the applicant is dissatisfied with the judgment of the court in C.M.C.C. NO. 204 of 2011; time within which the appeal ought to have been filed has ran out; the Process of execution has been set in motion; and the appeal has a high chance of success.
3. In his supporting affidavit the applicant reiterates his grounds and in addition states that the delay to file the appeal was occasioned by his counsel and delayed proceedings from the lower court.
4. The application was opposed by the respondent who filed a replying affidavit dated 13.9.2016. In the same he depones that the applicant is guilty of laches; the application is premised on fabrication and lies; the applicant has not demonstrated that he will suffer any loss if execution takes place; the appeal does not stand a chance of success as judgment was entered on admission ; the same is an afterthought and meant to deny him fruits of his success.
5. The issue for determination is whether or not to grant stay and to enlarge time within which to file an appeal.
6. From the record the respondent filed suit claiming Kshs. 130,000/= from the applicant and one other person. The applicant and his co-defendant in the trial court admitted that kshs. 85,000/= had been paid out to the appellants co-defendant and they consented to judgment being entered against them.
7. The balance of kshs. 45,000/= remained in dispute and the matter proceeded to hearing only on the said disputed sum, which claim was dismissed.
8. In this application the applicant says he intends to appeal against the judgment however he has not shown any acceptable grounds for setting aside a consent judgment which means that he may have an uphill task on appeal. Secondly, he blames the registry alongside his lawyer. As for the registry, no of payment of proceedings on time or certificate of delay were exhibited in support of his assertion.
9. In the circumstance, I am not persuaded that in this application the applicant is deserving of any of the 2 prayers.

The application is dismissed with costs.

DATED and DELIVERED at BUNGOMA this 16TH day of FEBRUARY, 2017

ALI-ARONI

JUDGE.