



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CIVIL APPEAL NO 61 OF 2014**

**(Appeal against an order issued 31/07/2014 in Kigumo CC NO 92 OF 2012 – WACHIRA PM)**

**FRANCIS MUNYUA NGUGI.....APPELLANT**

**VERSUS**

**JACKSON MUCHOKI MWANGI.....RESPONDENT**

**RULING**

1. It is not quite clear what the appeal herein is against. The memorandum says that the appeal is against an order issued by the lower court on 31/07/2014. The order and/or the ruling resulting in the order has not been availed to this court.
2. The subject of this ruling is the **notice of motion dated 09/06/2015** by the Appellant seeking stay of execution of decree pending disposal of the appeal. At the hearing of the application learned counsel for the Appellant stated that the appeal is against an order of the lower court by which it refused to stay execution sought by the Appellant (who is the judgment-debtor) after the Respondent (decree-holder) rejected an offer to pay the decretal sum by instalments (it is a money decree). Counsel further stated that there was no appeal against the decree itself. But he subsequently stated that the Appellant had also sought in the same application before the lower court an order to set aside the *ex parte* judgment that resulted in the decree which was also refused. So, learned counsel corrected himself by stating that the appeal is also against the order of refusal to set aside the *ex parte* judgment.
3. It appears that execution of the decree proceeded. That execution was by attachment and sale of the Appellant's land. Learned counsel for the Respondent submitted that at the time of the sale there was no stay of execution or an order of inhibition or prohibition by the High Court in place against the Appellant's parcel of land; that the Appellant tried to sabotage auction of the land by paying the auctioneer some KShs 50,000/00 towards the decretal sum; that the auctioneer accepted the payment without prejudice but did not stop the sale; and that the sale proceeded to its logical conclusion.
4. Counsel further submitted that the land was bought by the highest bidder and a vesting order made by the court, and a further order issued for the Executive Officer of the court to sign all necessary documents of transfer on behalf of the Appellant. However, actual transfer could not be effected because of the stay of execution issued by this court on 30/06/2015. All that was stated by learned counsel for the Respondent was borne out by the Respondent's replying affidavit filed on 26/10/2016. There was no response from the Appellant's learned counsel in respect to all those matters.
5. Learned counsel for the Appellant also conceded that there was no application filed by the Appellant to set aside the sale under **Rule 74** or **Rule 75** of **Order 22** of the **Civil Procedure Rules, 2010** (the **Rules**).
6. In these circumstances I cannot see what would be achieved by a stay of execution as the sale of the Appellant's parcel of land in execution of the decree against him has not been challenged under Rule 74 or Rule 75 of Order 22 of the Rules. It is also to be noted that the Appellant has sought stay of execution too late. He should have sought stay when he lodged his appeal on 15/08/2014. He should not have waited until 09/06/2015 to apply.
7. The notice of motion dated 09/06/2015 is dismissed with costs. The interim stay of execution granted by this court on 30/06/2015 is hereby vacated. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 2<sup>ND</sup> DAY OF MARCH 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 3<sup>RD</sup> DAY OF MARCH 2017**