

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 581 OF 2016

SIMON KANURE KIBUE T/A RESTORERS

CONSULT AUCTIONERS.....APPELLANT

VERSUS

ZIPPORAH W. NJENGA.....RESPONDENT

RULING

The appellant was fined Kshs. 100,000/= and ordered to pay Kshs. 50,000/= to the respondent by the Auctioneers Licencing Board in a decision dated 27th July, 2016. He was aggrieved by the said decision and lodged an appeal.

There is now before me an application by way of Notice of Motion under Section 25 (1) of the Auctioneers Act 1996, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1 A, 1B and 3A of the Civil Procedure Act for a stay of execution of the said order pending the hearing and determination of the appeal. The grounds are set out on the face of the application alongside a supporting affidavit sworn by the appellant. The respondent opposed the application and filed a replying affidavit.

The appellant was required to comply with the decision within 30 days from 27th July, 2016. This application was filed on 21st September, 2016 after the expiry of the period given in the said order. That being the case, no stay could have been issued at the time the application was filed because the time had already lapsed. There is no evidence to show whether or not there was compliance.

That notwithstanding, I have read the application, the opposition thereto and the submissions filed by both counsel. The appellant has a right of appeal and has offered to deposit the amount cited in the order as security. The respondent states that she has the ability to refund the sum of Kshs. 50,000/= ordered to be paid to her by the appellant in the event the appeal succeeds.

As I have said there is no evidence that the appellant complied with the said order. Whatever the case, I am persuaded that there should be stay of the said order if it had not been complied with already. In the event that it has, then the appellant shall be entitled to the refund of the money so paid at the conclusion of the appeal if it would be in his favour.

Accordingly the application is allowed, the appellant shall deposit a sum of Kshs. 150,000/= (in case he did not comply with the order) with the court pending the hearing and determination of the appeal. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 21st Day of March, 2017.

A. MBOGHOLI MSAGHA

JUDGE