

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 20 OF 2011 (OS)

DAVID ENOS NZIOKA.....PLAINTIFF

VERSUS

PURITY NYAMBURA NZIOKA.....DEFENDANT

RULING

1. The Motion I am called upon to determine is dated 9th February 2017. It seeks in the main ‘stay of execution and all consequential orders arising therefrom’ pending appeal. It is brought at the instance of the respondent, Purity Nyambura Nzioka.

2. The prayers as set out on the face of the application are incredibly vague on the order sought to be stayed. The prayers are poorly and clumsily drafted, but from the grounds and the affidavit in support the respondent appears to be aggrieved by the ruling that I delivered herein on 3rd February 2017. It is not clear whether the stay order is sought in respect of that ruling or other unidentified rulings delivered earlier. Her affidavit makes reference to the rulings of 2nd October 2015 and 3rd February 2017. She says she has appealed against the ruling, yet it is not clear which of the two rulings has been appealed against.

3. There is a response to the application by the petitioner, David Enos Nzioka. He opposes the application and raises several grounds. The critical one is that the applicant had previously brought several applications in this cause all of which have been dismissed. He argues that this court cannot stay a Court of Appeal order, for the instant proceedings relate to implementation of a Court of Appeal decision.

4. The Motion was argued orally before me on 16th March 2017. Counsel for both sides gave vent to the rival affidavits on record sworn by the parties that they respectively represent in the matter. I have noted the arguments advanced.

5. I have noted that although the Motion seeks stay of execution pending appeal, the respondent has not made an effort to demonstrate that there is an appeal that she has filed at the Court of Appeal or at least that one is contemplated. She alleges that she has appealed against a ruling, which has not been identified, yet she has not attached a memorandum of appeal as proof of the alleged filing. If she only contemplates filing appeal, she has not demonstrated that she has filed and served a notice of appeal as required by the rules that regulate appeals at the Court of Appeal. See *Safaricom Limited vs. Ocean View Beach Hotel & 2 others* CA No. 327 of 2009 (unreported).

6. Grant of stay of execution orders at the High Court pending appeal is governed by Order 42 rule 6 of the Civil Procedure Rules. Indeed, the respondent has premised her Motion on these provisions. Yet, she has not sought to demonstrate that she would suffer substantial loss if the orders sought are not granted, neither has there been effort to address the question of security for costs. See *Kung’u Muthua vs. James Icharia Kung’u* (2015) eKLR.

7. From what I have stated so far it is plain that the Motion before me is attended by very serious flaws. It cannot stand. The orders sought under it cannot possibly be granted. It can only exist for the purpose of dismissal and I therefore hereby dismiss the same. The petitioner shall have the costs thereof.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE