

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELCA CASE NO. 9 OF 2019

COUNTY GOVT. OF KAKAMEGA.....APPLICANT

VERSUS

THOMAS MUNIKA MUKUNGA

OIC KHAGERIA AP CAMP.....RESPONDENTS

RULING

The application is dated 20th January 2020 and is brought under section 1A & B, 3, 3A of the Civil procedure Act seeking the following orders;

1. That this appeal be listed before the honourable Judge and the same be dismissed for reason that the appeal has abated by virtue of this court's ruling delivered on 2nd July 2019.
2. That the cost of the application and appeal be awarded to the applicant.

It is based on the grounds that, the appeal was filed on the 3rd April 2019 and sought only one prayer that the appeal be allowed and part of the ruling of Hon. E. Malesi delivered on 5th March 2019 directing the appellant to deposit a sum of kshs. 4,500,000/- as security be set aside, vacated and or varied. That on the 17th April 2019, the appellant also filed a notice of motion wherein the appellant sought an order of stay of execution of part of the ruling of Hon. E. Malesi delivered on 5th March 2019 directing the appellant to deposit a sum of kshs. 4,500,000/- as security pending the hearing of the application/appeal. That on the 2nd July 2019, this honourable court rendered its ruling on the application whereby the application was dismissed with costs to the respondent. That on the 23rd July 2019 the appellant filed a notice of appeal in Kisumu but no appeal was formally filed. There is no appeal against the ruling or stay. That as it stand the appeal herein has abated by virtue of the ruling of 2nd July 2019 as there is nothing else to litigate before this court.

The respondent submitted that, on 5th March, 2019, a Ruling was delivered by the Hon. E. Malesi (SRM) in respect of CMCC No. 1014 of 2018 in which the court directed the appellant to inter alia deposit the sum of Ksh. 4,500,000/= as security. That being aggrieved by the decision of the learned magistrate, the appellant filed the instant appeal on the 3rd day of April, 2019. (Annexed herein and marked VM-2 is a true copy of the Memorandum of Appeal). That on the 17th day of April, 2019, the respondent filed a Notice of Motion application seeking inter alia an order for stay of execution of part of the ruling by the Hon. Malesi (SRM) directing the appellant to deposit the sum of Ksh. 4,500,000 as security pending the hearing of the matter. That the applicant is misleading this court by alleging that the appeal has abated. That the appeal is pending in court and that the same is scheduled for mention on the 10th day of March, 2020 for purposes of taking directions. That the issues existing in the applicant's application do not attain the established threshold for the grant of the orders sought.

This court has considered the application and the submissions therein. The appellant filed the instant appeal on the 3rd day of April, 2019. On the 17th day of April, 2019, the respondent filed a Notice of Motion application seeking inter alia an order for stay of execution of part of the ruling by the Hon. Malesi (SRM) directing the appellant to deposit the sum of Ksh. 4,500,000 as security pending the hearing of the matter. On the 2nd July 2019, this court rendered its ruling on the application whereby the application was dismissed with costs to the respondent. The appeal is therefore still pending and is yet to be canvassed. I find this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 28TH DAY OF JULY 2020.

N.A. MATHEKA

JUDGE