



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 38 OF 2013

AKIDA 2000 COMPANY LIMITED.....RESPONDENT/APPELLANT

VERSUS

JOSEPHAT WAMUYU GITAU.....APPLICANT/RESPONDENT

R U L I N G

1. The Applicant, **Josephat Wamuyu Gitau** filed an application dated 30th July, 2015 wherein he sought orders to wit:

1) The decretal amount deposited in court be released to the Respondent.

2) Costs of this application be provided for.

2. The Applicant avers that the Respondent was issued with a stay of execution pending the hearing and determination of the Applications dated 19th February, 2013 and 15th March, 2013 and which applications have since been dismissed hence lapse of stay orders. The Applicant therefore seeks that the decretal amount be released to him.

3. The Applicant filed his written submissions which he also highlighted in court. He argued where pertinent, that though the Respondent has opposed the application for release of the decretal sum, it did not file its submissions in respect of the same. He contended that the order of stay was issued in the year 2013 which stay order was conditional. The stay of execution was issued on condition that the decretal sum of Kshs. 586, 000/- be deposited in court pending the hearing and determination of the applications which were consolidated on 22nd April, 2013. He contended that since the applications were on 22nd September, 2015 dismissed for non attendance then the decretal amount should be released. He added that the Respondent is not interested in prosecuting the appeal seeing that he has constantly delayed in prosecuting the same.

4. According to the courts' record, counsels in this matter appeared before **Onyancha J.** on 26th March, 2013 when they entered a consent to have the three applications dated 19th February, 2013, 15th March, 2013 and 20th March 2013 consolidated. The court then gave orders to the effect that:-

1) "The applications are hereby consolidated.

2) There be a stay of execution of the decree until the hearing and determination of the applications on condition that a sum of Kshs. 586,000/= is deposited in court not later than 27th March, 2013 and in default thereof the stay order shall automatically stand discharged.

3) ...

4) ...

5) ...”

5. The matter then proceeded for interparties hearing first before **Onyancha J** and later **J.K. Sergon J.** who on 29th July, 2015, dismissed the three (3) consolidated applications. The Respondent then filed an application dated 1st September, 2015 wherein he sought to have dismissal order set aside and the reinstatement of the applications. Vide his ruling dated 11th December, 2015 the honourable **J.K. Sergon J.** set aside his dismissal orders and reinstated the applications.

6. On 10th March, 2016, the matter came up before me for the hearing of the three (3) applications. **Mr. Kiplagat**, counsel representing the Respondent was present in court. There was no counsel in attendance for the Respondent, **Mr. Kiplagat** sought to have the applications dismissed for want of attendance and this court ordered the dismissal of the applications. It is evident that since the applications were dismissed on 10th March, 2016, the Respondent has not moved this court for reinstatement of the applications. It is also clear that on 4th July, 2016, when the current application came up for interparties hearing, the Respondent was not in court, despite having been served with the hearing notice as evidenced by the Affidavit of service.

7. This court is convinced that the Respondent has had knowledge of hearing dates but has conveniently ignored the same. Indeed, the court orders for stay of execution issued on 26th March, 2013 were conditional. The stay of execution was to last until the hearing and determination of the three (3) applications which applications stood dismissed as at 10th March, 2016. It is only just therefore that the decretal sum is released to the Applicant.

8. In the premises aforesaid, the application has merits and it is hereby allowed as prayed with costs to the Applicant.

Dated, signed and delivered at Nairobi this 1st day of September, 2016.

.....

L NJUGUNA

JUDGE

In the presence of

..... ***for the Appellant***

..... ***for the Respondent.***