

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 18 OF 2010

SOUTH NYANZA SUGAR CO. LTD.....APPELLANT

VERSUS

ABDI YUSUF MOHAMMED t/a A.M. YUSUF WHOLESALERS.....RESPONDENT

*(Appeal arising from the Judgment and Decree of Mr. GITHINJI ESQ. The then Principal Magistrate-
Narok dated and delivered on the 6th day of January, 2010, NAROK PMCC NO. 3 of 2006)*

RULING

1. By an application dated 11th September 2014 the Applicant, South Nyanza Sugar Company Limited approached the court seeking an order of Stay of Execution of the Judgment and decree in **Narok CMCC No. 3 of 2016** pending hearing and determination of the application interpartes. It is based upon **Order 42 Rule 6 (1) and (2)** of the **Civil Procedure Rules**.

2. The judgment of the trial court was appealed from and the decretal sum of Kshs.538,400/= was deposited in a joint Account of the parties Advocates names at the NIC Bank – Kisumu Branch – pursuant to a court order of the trial court issued on the 6th April 2010. I have seen the deposit slips.

The above sum was deposited as a condition for stay of execution pending appeal. The appeal is yet to be heard. I have considered the Replying Affidavit by the Respondent. It has some merit. The appeal was filed way back in 2010 and the stay orders granted on the 6th April 2010.

Since then, the appellant has taken no steps to prosecute the appeal thus shutting the Respondent from enjoyment of his fruits of the Judgment. That inordinate delay no doubt has caused the respondent prejudice.

3. I have seen an order issued on the 9th September 2014 by the trial court. The orders of stay of execution earlier granted by the court on the 29th May 2014 were set aside and discharged as the decretal sums were not deposited in joint account of the Advocates for both parties. I have seen a cheque for Kshs.538,400 in joint names of the parties Advocates. I have seen a statement of Account of the bank deposit as at 25th May 2014. This however does not give a blanket permit to the applicant to go to sleep and not prosecute its appeal.

4. Granted the orders of stay of execution are in place. Until they are lifted, discharged or set aside they are valid and the Respondent cannot execute the decree.

5. I have considered the circumstances of the appeal. I shall allow the application dated 11th September 2014. There shall be an Order of stay of execution of the trial courts judgment delivered on the 6th January 2010. The decretal sum of Kshs.538,400/= deposited at the NIC Bank Kisumu Branch in the joint names of Okong'o Wangondu & Company and Lel & Company Advocates shall remain so deposited pending the hearing and determination of the appeal.

It is further directed that the Appellant/Applicant shall fix the hearing of this appeal within a period of 60 days from the date of this ruling. Failure to comply with this order, shall render the appeal to stand dismissed, and the Respondent shall be at liberty to apply for release of the decretal sum to itself.

6. Costs of the application shall be paid to the Respondent by the appellant.

Dated, signed and delivered in open court this 6th day of October 2016

JANET MULWA

JUDGE