

ORIGINAL

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 94 OF 2009

CHARLES SIGU OTIENO.....APPELLANT

VERSUS

JOHN OWUOR ANGASA.....RESPONDENT

R U L I N G

The notice of motion application dated 21-3-2012 arises from the dismissal of the applicant's appeal and consequently filing a second appeal in the court of appeal. The said application prays for stay pending appeal and is supported by the affidavit of the appellant sworn on 21-3-2012,

The substance of the application is that the intended appeal shall be rendered nugatory if stay of execution is not granted. In particular the Deputy Registrar has taxed the respondent's costs at Kshs. 106, 527/= in favour of the respondent . Infact it is the respondent's case that he ought to be paid this costs as the previous cost in the lower court of Kshs.8,699/= has not been paid by the applicant.

The condition for granting stay pending appeal are now well settled by the statute and various case laws. A party must demonstrate that the appeal shall be rendered nugatory if stay is not granted and that substantial loss shall be incurred.

He must finally as of necessity provide a sufficient security pending the appeal.

Having carefully perused the application as well as the submissions by both parties, I am not persuaded that the application is meritorious. The applicant has not demonstrated any loss he stands to suffer should he pay the taxed costs. Equally, he has failed to demonstrate that the respondent shall not pay back should the application succeed.

In the premises I do dismiss the appeal with costs to the respondent.

Dated, signed and delivered at Kisumu this 5th day of February , 2014.

H.K. CHEMITEI

JUDGE

HKC/va