

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 157 OF 2014

ORIENTAL MILLS LTDAPPELLANT/APPLICANT

VERSUS

JOHNSON GATHUKU WANDURUA.....RESPONDENT

RULING

1. The applicant through a Notice of Motion dated 21/5/14 prays for a temporary stay of execution of the judgment and subsequent decree of the subordinate Court delivered on 2nd April 2014 in CMCC 2992 of 2010 pending the hearing and determination of the appeal filed herein and that costs be provided for.
2. The application is premised on the grounds on the face of the application and the sworn affidavit of Fidellis Mueke Ngulli that judgment was entered in favor of the respondent as against the appellant on 2nd April 2014 in Milimani CMCC 2992 of 2010 subsequently the appellant filed an appeal against the said judgment; that there was no stay of execution and the appellant is apprehensive that the Respondent /Decree holders are likely to proceed with execution unless they are stopped by the Court.
3. The appellant argues that he has a prima facie case in the appeal with overwhelming chances of success; that he filed a memorandum of appeal and is yet to be furnished with certified copies of proceedings, judgment and decree of the subordinate Court; that he is likely to suffer irreparable loss, damage and prejudice should the respondents proceeded with execution as the respondent is of unknown means and might not be able to refund the decretal amount if the appellant's appeal is successful; that he is willing to abide by any conditions as to security as may be ordered by this Court; that it is only mete and just that the application is allowed and that no prejudice shall be occasioned on the respondents which cannot be compensated.
4. The application was unopposed.
5. The matter came up for hearing on 14/7/2014 and Mr. Kabiru for the appellant/applicant reiterated the grounds on the face of the application and in the supporting affidavit and further added that the appellant filed his memorandum of appeal on 24/4/14 and the application was brought without delay and urged the Court to allow the appellant's application.
6. The Memorandum of Appeal was filed on the 24th of April 2014. The judgment the appellant seeks to stay is said to have been delivered on the 3th of April 2014. The said judgment was not attached in the proceedings, to enable this Court confirm the grounds of appeal stated in the Memorandum of Appeal. Secondly the applicant has not explained the loss that it will suffer. Merely stating that it will suffer loss is not sufficient. I therefore find no merit in the application and dismiss it with no order as to costs.

Orders accordingly.

Dated, signed and delivered this *8th* day of *October*, 2014.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Appellant/Applicant

.....For the Respondent

.....Court Clerk