

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 52 of 1999

ALICE WAMBURA NJAGI.....1ST PLAINTIFF

NANCY GATURU IRERI.....2ND PLAINTIFF

VERSUS

ROBERT NJOKA.....1ST DEFENDANT

NICHOLAS MWAKI.....2ND DEFENDANT

RULING

The court did on 31/7/2008 deliver a ruling following an application for a stay of execution.

I declined to grant a stay and one of the reasons I gave was that the applicant therein had not established that the Respondents were women of straw who could not refund the money if the appeal was allowed.

I also found that the appeal would not have been rendered nugatory since this was a money decree and the same could be refunded. The meaning and purport of those observations was that the money should have been paid to the Respondents.

The Deputy Registrar thereafter was moved by way of a notice to show cause and she gave orders that the money be deposited in a joint bank account. She in effect changed my entire ruling and effectively granted the stay orders which I had declined. She may not have appreciated the effect of her ruling but she did actually revise my ruling which she lacks jurisdiction to do.

I have carefully considered the issues raised by Mr. Kinyua in his preliminary objection and the replying affidavit of Robert Njoka dated 8/7/2009 but these do not change the fact that the Deputy Registrar gave orders that effectively changed and revised this court's orders of 31/7/2008. Those orders were illegal, irregular and void ab initio. The notice of motion dated 20/6/2009 therefore succeeds. The same is allowed in terms of prayers (a) (c) and (d). Parties should proceed as if the Deputy Registrar's orders were never made.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 4th day of Nov 2009.

In presence of:- Mr. Okwaro for plaintiff present

Mr. Kinyua Muriithi for defendant/Respondent