



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 28 OF 2015**

**FRANCIS HEZRON SHIABA.....PLAINTIFF/APPLICANT**

**VERSUS**

**MORRIS MUNAMEZA ISIYE.....DEFENDANT/RESPONDENT**

**RULING**

The application is dated 14<sup>th</sup> September 2020 and is brought under Section 34 (1) of the Civil Procedure Act seeking the following orders;

1. That this honourable court do grant leave to the plaintiff to deposit the decretal sum of Ksh. 950,000 in court.
2. That costs be provided for.

It is based on the affidavit of the plaintiff and the grounds that by judgment delivered on the 28<sup>th</sup> day of April, 2020 court ordered the plaintiff to refund to the defendant the sum of Ksh. 950,000 within 90 days from the date of delivery of the judgment; and that once the refund has been made the name of the defendant to be cancelled as the proprietor of L.R. No. Isukha/Lubao/2952. That although the defendant filed a Notice of appeal, to date, there are no orders from the Court of Appeal staying the judgment of this honourable court. That the plaintiff, being unemployed, could not immediately raise the decretal amount of Ksh. 950,000 within the specified period of 90 days but managed to do so on the 20<sup>th</sup> day of August, 2020. That however, on inquiring from the current advocate on record for the defendant, Mwamu & Co. Advocates, whether they had instructions to receive the amount of Ksh. 950,000 on his behalf, the said Advocates reported back that the defendant had declined to grant them instructions to do so. That under the circumstances the plaintiff prays for leave to deposit the amount of Ksh. 950,000 in court so that the Kakamega County Lands Register plot 2952 in his name in compliance with the terms of the judgment.

The respondent submitted that the plaintiff sued him seeking various orders in this matter which matter was heard to conclusion and judgment delivered on the 28<sup>th</sup> April, 2020. That he was dissatisfied with the same as it is completely unfair and did not address the issues raised and is against the weight of evidence. That he has since appealed against the decision. That his intended appeal raises serious and points of law which he should be allowed to canvas in the appeal. That the intended appeal has high chances of success and if the application is allowed the intended appeal will be rendered nugatory. That the delay in obtaining orders or fixing the same for hearing was caused by the Covid-19 pandemic which caused partial closure of the courts and the courts are just picking up and not back to business as usual.

This court has considered the application and the submissions therein. On perusal of the court file I find that by judgment delivered on the 28<sup>th</sup> day of April, 2020 where this court ordered the plaintiff to refund to the defendant the sum of Ksh. 950,000/= within 90 days from the date of delivery of the judgment and that once the refund has been made the name of the defendant to be cancelled as the proprietor of L.R. No. Isukha/Lubao/2952. The plaintiff submitted that, being unemployed, he could not immediately raise the decretal amount Ksh. 950,000 within the specified period of 90 days but managed to do so on the 20<sup>th</sup> day of August, 2020. That however, on inquiring from the current advocate on record for the defendant, Mwamu & Co. Advocates, whether they had instructions to receive the amount of Ksh. 950,000/= on his behalf, the said Advocates reported back that the defendant had declined to grant them instructions to do so. I find that the applicant failed to abide by the terms of the judgement and cannot now come to ask this court to vary its judgement. Apart from asking for leave to deposit the amount of Ksh. 950,000 in court he is in effect also asking for extension of time to refund the money. I find this application is not merited and I dismiss the same with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 9<sup>TH</sup> DECEMBER 2020.**

**N.A. MATHEKA**

**JUDGE**