

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

CIVIL APPEAL NO.82 OF 2015

JACOB MURIUNGI MUREA.....APPELLANT

=VERSUS=

SALOME NJOKI NJUGUNA.....RESPONDENT

RULING

1. The Respondent /Applicant herein filed a notice of motion dated 25th July 2018 in which she sought stay of execution of the judgement of this court delivered on 28th June 2018. The applicant contends that if stay is not granted, the intended appeal will be rendered nugatory.

2. The applicant's application was opposed by the appellant / respondent based on grounds of opposition dated 7th January 2019 and filed in Court on 10th January 2019 as well as a replying affidavit sworn on 6th November 2018. The respondent contends that the applicant is asking the court to give orders in vain in view of the ruling of Justice Kiage JA which dismissed the applicant's application seeking leave to file an appeal out of time.

3. I have considered the applicant's application as well as the opposition to the same by the respondent. The purpose of applying for stay of execution pending appeal is to ensure that where the stay is deserved, the intended appeal is not rendered nugatory. In the instant case, the applicant never filed a notice of appeal in time. When the applicant moved to the Court of Appeal seeking leave to file a notice of appeal out of time, that application was dismissed by Justice Kiage JA in a ruling delivered on 20th December 2018. As, matters stand, there is no appeal which the applicant can prefer to the court of appeal. There is no indication that the applicant sought a reference in accordance with Rule 55 of the Court of Appeal Rules. It will therefore be in vain to grant stay when there is no appeal being preferred. I proceed to dismiss the applicant's notice of motion dated 25th July 2018 with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 28th day of March 2019.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Nyareru for Mr. Mulanyi for Appellant/Applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE