



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 829 OF 2015

RUTH A. OGEMBO.....PLAINTIFF

VERSUS

JAGDIP BHANGWANDAS MORPARIA.....1ST DEFENDANT

KHIMJI K. CHABADIA.....2ND DEFENDANT

RULING

1. Jagdip Bhagwandas Morparia and Khimji K. Chabadia being ***Judgment Debtors*** have come to this court against Ruth A. Ogembo, the ***decree holder*** for stay of execution of the decree and sale of the properties attached pending the hearing and determination of the intended appeal. Moreover, that a warrant of attachment and notice of sale of property issued to Demigen Auctioneers be recalled, revoked and or set aside. They pray for costs.

2. The application is based on the grounds that Judgment was delivered on 7/12/2018 in favour of the decree holder. The applicant is dissatisfied with the judgment and intends to appeal.

3. The applicant filed notice of Appeal on 7/12/2018 and served the same and on the same date requested for copies of proceedings and has not received the same.

4. The respondent has instructed Demigen Auctioneers to proclaim the properties of the applicant which they have done. The applicant prays that the status quo be maintained pending the outcome of Appeal.

5. Mr. Munuang'o, learned counsel for Applicant states that the application has been brought within reasonable time since 7/12/2018. The delay is due to the fact that Deputy Registrar failed to avail typed proceedings in good time. He submitted that the applicant is likely to suffer substantial loss if stay is not granted as the respondent is not a person of means. Lastly the applicant is ready to provide security of Kshs. 500,000/=.

6. Mr. Emukule learned Counsel for the responded opposes the application on grounds that the matter has been before the Deputy Registrar for assessment of costs and that there were indications that it would be settled. Moreover, that there is inordinately delay and that payment of Kshs. 500,000/= is not sufficient as he is seeking the entire Kshs. 1,317,820.

7. On substantial loss, he avers that there is no evidence that the respondent is a person of no means.

8. I have carefully considered the application, rival submissions and do find that the application is brought with inordinate delay of approximately 10 months after Judgment. The applicant did not require proceedings to file the application for stay of execution pending appeal. The application is brought when the process of execution has been initiated.

9. On substantial loss, it is the applicant's burden to demonstrate that the respondent will not be able to refund the decretal sum and not the respondent's burden to prove that she will be able to pay. The applicant has not proved as required by law.

10. I do find that the application is brought belatedly and no proof of substantial loss and therefore the same is dismissed with costs.

Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 24TH DAY OF OCTOBER, 2019.

In the presence of:

Mr. Munwoyo for Defendant

Mr. Toyo for Plaintiff

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE