



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L APPEAL NO. 4 OF 2017**

**JORAM YATOR.....APPELLANT**

**VERSUS**

**TITUS KANGOGO.....RESPONDENT**

**RULING**

**Joram Yator (hereinafter referred to as the appellant)** has come to court against **Titus Kangogo (hereinafter referred to as the respondent)** praying for a stay of execution of the judgment in Eldoret CMCC No. 240 of 2015 pending the hearing and determination of appeal. The application is based on reasons that an appeal has been filed and that the respondent has commenced the process of attachment of assets of the appellant. If stay is not granted, the appeal which has a high chance of success will be rendered nugatory. That the appellant will suffer substantial loss if stay of execution is not granted as the money claimed by the appellant was actually paid to the seller of the land in question. No prejudice will be suffered if the orders are granted. Lastly, that the application is made without undue delay.

In the supporting affidavit, the appellant states that he filed an appeal after being dissatisfied by the decision of the Magistrate. He obtained decree on 9.10.2017. Judgment was delivered on 13.2.2017. He applied for proceedings on 14.7.2017. The respondent obtained warrants for attachment on 9.10.2017 and therefore, there is an impending danger of execution. Titus Kangogo in his reply states that judgment was delivered on 13.2.2017. No memorandum of appeal has been annexed. The intended appeal is a sham. The defendant should be ordered to deposit the entire decretal sum. Lastly, that the application is meant to denying the respondent to enjoy the fruits of judgment.

I have considered the application and the responses and do find that judgment was delivered on 13.2.2017. The application was filed on 15.11.2017, approximately 7 months after judgment. I do find this to be inordinate delay which has not been explained. On substantial loss, the applicant has merely stated that he will suffer substantial loss but has not demonstrated how he will suffer substantial loss. The applicant has not shown any intention to deposit security as required by Order 42, Rule 6 of the Civil Procedure Rules, 2010. The application herein does not meet the threshold under Order 42, Rule 6. The same is dismissed with costs.

**Dated and delivered at Eldoret this 16<sup>th</sup> day of May, 2018.**

**A. OMBWAYO**

**JUDGE**