

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CIVIL APPEAL NO. 11 OF 2014

GEDIEL MUGAMBI M'IMARIA.....1ST APPELLANT

STEPHEN MEEME M'IMARIA.....2ND APPELLANT

TIMOTHY KIMATHI M'IMARIA.....3RD APPELLANT

VERSUS

ROBERT M'IMPWI MUNGANIA.....RESPONDENT

RULING

This ruling arises from the notice of motion dated 15th November 2018 brought under order 42 rule 6 (2) & order 51 rule 1 CPR, section 1A 1B and 3A Civil procedure Act. The applicant's seeking the following orders:

1. That the honourable court be pleased to order that the security deposit of the sum of Kshs.350,000 deposited in court by the 2nd appellant vide deposit receipt no. 0194604 on 6th August 2014 as security for the due performance of the decree issued in Maua CMCC No. 100 of 2007 be released to the respondent.
2. That the costs of this application be provided for.

The application is supported by grounds apparent on the face of that application and an affidavit sworn by Christine Kawira Ungu advocate the same date. In the said supporting affidavit, the applicant deponed that upon delivery of judgment in Maua CMCC no. 100 of 2007 on 6th November 2013, the 2nd appellant filed a notice of motion dated 22nd April 2014 seeking inter alia an order staying execution of the decree and judgment referred herein pending hearing and determination of the intended appeal. It is further deponed that upon hearing the said application, the court rendered its ruling on 24th July 2014 and ordered the 2nd appellant to deposit the sum of Kshs.350,000 in court as security for the due performance of the decree issued in the said CMCC no. 100 of 2007 as a condition for the grant of the order for stay. In compliance with the orders of the court, the 2nd appellant deposited the sum of Kshs.350,000/= in court vide receipt no. 0194604 on 6th August 2014 as security for the due performance of the said decree. It is further deponed that subsequently the appeal was heard and judgment delivered on 25th July 2018 in which the said appeal was dismissed with costs and the orders of stay of the judgment and decree in CMCC no. 100 of 2007 were set aside. The applicant also deposed that the said decree has not been satisfied and no execution has been done. In the result the applicant contends that it is therefore necessary and in the interest of justice that the security deposit of the sum of Kshs.350,000 deposited in court by the 2nd appellant be released to the applicant who is also the decree holder for the due performance of the said decree. That application is not opposed as no replying affidavit or grounds of opposition was filed as a rejoinder. In the absence of any replying affidavit controverting the facts given in the supporting affidavit, the application is therefore allowed as prayed.

The appellants/respondents shall bear the costs of the application. It is so ordered.

READ, DELIVERED AND SIGNED BY E. C. CHERONO, ENVIRONMENT AND LAND COURT JUDGE KERUGOYA AT MERU THIS 7TH DAY OF DECEMBER, 2018.

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In the presence of:

Ms. Munga holding brief for Mwirigi for the respondent

C/A Janet