

4. The Court in default, directed that if the parties could not agree on a commercial bank, the decretal sum should be deposited into an account to be opened with any branch of Kenya Commercial Bank Ltd.
5. In the meantime, the Claimants advocates costs were taxed at Kshs 156,098/- and a certificate of costs issued on 10 February 2016.
6. The conditions for the grant of stay of execution were not complied with and around 22 February 2016, the Claimants sent in auctioneers who proclaimed the Respondents properties.
7. The proclamation prompted the Respondent to move Court under a certificate of urgency on 26 February 2016 seeking

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3. This honourable court be pleased to restrain the Plaintiffs and/or M/s Nasioki Auctioneers from attaching or taking away or selling the defendants proclaimed goods till this Application is heard and decided.

4. The court find the attachment as unlawful due to stay Orders granted by the Court.

5. That court do also find interest charged as unlawful and set aside.

8. When the motion was placed before Court on 26 February 2016, the Court granted prayers 1, 2 and 3 and directed the motion to be served for *inter partes* hearing on 14 March 2016.
9. The Claimants filed a replying affidavit through their counsel on record on 11 March 2016 and the motion was eventually taken on 7 April 2016.
10. The Court has duly considered the motion, replying affidavit and oral submissions made in Court.
11. In terms of the ruling on stay of execution application, the parties ought to have agreed on a commercial bank and deposited the decretal sum in the said bank on or before 4 March 2015.
12. And if the parties failed to agree, the decretal amount should have been deposited with Kenya Commercial Bank Ltd within the same timelines.
13. The first documented attempt by the parties to agree on a bank is a letter dated 13 April 2015 from the Claimants advocate on record, Odhiambo & Odhiambo Advocates and it suggested Standard Chartered Bank Nakuru Branch. The Claimants suggested a date and time for the account opening.
14. There is nothing placed on record by the Respondent that it even acknowledged receipt of the letter.
15. The second documented attempt is also from the Claimants, and it is a letter dated 20 May 2015. The letter suggested CFC Stanbic Bank.
16. What is clear from the material placed before Court is that the parties failed to abide by the conditions upon which stay of execution was granted.
17. And because the conditions were time bound, it is the humble view of the Court that the stay order lapsed and the Claimants were legally in order to proceed to execute in terms of the applicable statutory provisions.
18. Because the Respondent was the party at risk, there is nothing which stopped it from moving to Court to give further directions pending compliance with the stay condition.
19. In the event, the Respondent went on a slumber until the auctioneers moved in, nearly exactly 12 months later to the date (22 February 2016).
20. In the considered view of the Court, the present attempt by the Respondent is not only unmerited but an abuse of the court's process.
21. Before concluding a few words on the question of interest.
22. The Court did not award any interest on the decretal amount in the judgment; but in the stay order, the Court directed that the decretal amount should have been deposited into an interest earning account.
23. The inference being that interest was to accrue from the opening of a joint account in the name of the advocates on record.
24. Considering the foregoing, the Court is of the view that nothing turns on the Respondent's grouse

- on interest.
25. The Court notes that the Claimants advocate indicated the decretal sums had been subsequently paid and disbursed to the Claimants, but the implications of that before the determination of the appeal pending before the Court of Appeal is an issue which this Court need not delve in under the guise of the instant motion as worded.
26. The upshot of the above is that the motion dated 26 February 2016 is dismissed with costs to the Claimants.

Delivered, dated and signed in Nakuru on this 11th day of July 2016.

Radido Stephen

Judge

Appearances

For Claimants Mr. Aim instructed by Odhiambo & Odhiambo Advocates

For Respondent Mr. Kimatta instructed by Kimatta & Co. Advocates

Court Assistant Nixon