



Case Number:	Civil Appeal 67 of 2008
Date Delivered:	13 Oct 2008
Case Class:	Civil
Court:	High Court at Embu
Case Action:	Ruling
Judge:	Wanjiru Karanja
Citation:	MBURUGA MUCIRI NGURE v RUTH WANGARI MBURUGA [2008] eKLR
Advocates:	-
Case Summary:	...
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application Dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL 67 OF 2008

MBURUGA MUCIRI NGURE.....APPELLANT

VERSUS

RUTH WANGARI MBURUGA.....RESPONDENT

RULING

I have heard the application before me. I have considered the grounds on its face and the rival affidavits for and against the same. I have also considered the oral submissions by both counsel in court and the law applicable in this matter.

First and foremost, I agree with counsel for the Respondent that the said application is fatally defective. The same seeks for a temporary injunction under Order XXXIX Rule 1 and 2 of the Civil Procedure Rules. Although prayer 2 is one for stay of execution, it is noted that the application is not premised on Order XLI Rule 4 of the Civil Procedure Rules at all which is the only order dealing with stay of execution pending an appeal.

Order XXXIX on the other hand applies where there is a suit pending before the court. In this case the suit has already been dismissed and an appeal cannot be said to be a suit for purposes of order XXXIX rule 1 –because an appeal does not commence any civil proceedings. In any event, there is actually no decree here which is at a risk of being executed. My finding therefore is that this application lacks merit and the same is hereby dismissed.

W. KARANJA

JUDGE

13/10/2008

Delivered and signed in open court today in presence of Mr. Munene for Mr. Mwai and Respondent in person.

W. KARANJA

JUDGE

13/10/2008



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)