



**Royal Twigg Limited & another v Ikumi (Civil Appeal  
362 of 2023) [2024] KEHC 10446 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10446 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 362 OF 2023  
FN MUCHEMI, J  
AUGUST 23, 2024**

**BETWEEN**

**ROYAL TWIGGS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**JOHN NJUE KINYUA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOHN MUNGAI IKUMI ..... RESPONDENT**

**RULING**

1. The appellants filed an application at Kiambu High Court Civil Appeal No. E388 of 2023, in October 2023 seeking for orders of stay of execution against the judgment delivered on 30<sup>th</sup> August 2023 in Thika CMCC No. E532 OF 2021. The appellants also sought for orders that the Memorandum of Appeal annexed to the application be deemed as properly filed. However, the appellant did not annex any such memorandum of appeal to his application. On 11<sup>th</sup> October 2023, the matter was mentioned before the High Court Kiambu and the honourable judge granted stay on condition the appellants furnish the court with security in the form of a bank guarantee from Family Bank for the full decretal sum. The court further directed that the matter be transferred to Thika High Court for mention on 1<sup>st</sup> November 2023 for directions before the Deputy Registrar on grounds of jurisdiction following the gazettelement of the High Court.
2. On 5<sup>th</sup> March 2024, Counsel for the appellants apologized to the court for failing to file and serve the memorandum of appeal. The court noted that there was no appeal on record and that the court had erroneously granted orders of stay of execution on the presumption that there was an appeal. The appellants were granted 14 days to put their house in order as far as compliance with court directions were concerned. The matter came up for mention on 6<sup>th</sup> May 2024, and the counsel for the appellants informed the court that they filed a new appeal Thika HCCA No. E045 of 2024. Yet the appellant’s counsel did not avail to the Kiambu court the ruling for extension of time to file the appeal. Instead



she talked of directions that were given by a judge in Kiambu concerning filing of appeals out of time. The court gave more time for compliance.

3. The appellant seem to have realised the omission and immediately filed another appeal deliberately with the same parties. The said file only contains a memorandum of appeal but no other document. On the document is superimposed a payment of KShs.1550. There is no return of service of the memorandum of appeal on the respondent.
4. It is trite law that any ruling delivered by the court or any orders issued will always be born by the record. In HCCA No. 362 of 2023 formerly Kiambu E 388 of 223, the record does not contain any ruling or orders for extension of time to appeal out of time as the appellant purports. The appellant was given three mentions by the court to produce the said ruling or orders. All that the appellant managed to do despite a host of promises was to send a letter to the court dated 16/05/2024 where they purported to attach the bank guarantee, orders issued on 11/10/2023 and Practice directions of the then Presiding Judge Kiambu Lady Justice Kasango. However, attached was only a bank guarantee from Family Bank dated 12/10/2023 for KSh.728,675 being the decretal amount. The other two documents were not attached or served on the respondent.
5. Upon filing the application dated 4<sup>th</sup> October 2023, the Kiambu High Court granted interim orders pending hearing of the application inter parties. The orders issued on 11/10/2023 granted stay of execution on condition that the bank guarantee for the decretal amount was availed. However, it appears that the court assumed that an appeal given No. E388 of 2023 had been filed. This was not the case since there was no memorandum of appeal. The application was never prosecuted and as such the interim orders lapsed within 14 days.
6. The appellant urged the court to consolidate this file Thika HCCA No. 362 of 2023 with Thika HCA No. E45 of 2024 which contained a memorandum of appeal only. The respondent opposed that oral application arguing that the appellant was trying to cure the anomaly in Thika HCCA No.362 of 2024 of having no memorandum of appeal by consolidating the two files. In my considered view, HCCA No. 362 of 2023 was never an appeal although it was so named at Kiambu High Court. The matter consisted of an application that was never prosecuted. As such, the file cannot be consolidated with another appeal. The file Thika HCCA E.45 of 2024 was filed on 12/03/2024. The judgment appealed against was delivered on 30/08/2023 about seven (7) months later. The time to file the appeal against the said judgment in Thika CM Court No.E.532 of 2021 had expired on 29<sup>th</sup> September 2023. The appellant did not seek orders for extension of time to appeal in E.45 of 2024. As such, this file as well as Thika HCCA No.362 of 2023 never matured to become appeals due to failure by the appellant to take the necessary legal steps.
7. The respondent complained during the three mentions before me that the appellant was deliberately buying time to delay execution of the decree. I totally agree that the appellant who took the court through a long academic exercise was in actual fact delaying the execution of the judgment. The respondent ought to have moved to execute the judgment since there were no orders for stay in place since the ones given on 11/10/2023 by Kiambu High Court had long expired and were never extended.
8. Consequently, I reach a conclusion that the two files before this court HCCA No.362 of 2023 and HCCA No. E.45 of 2024 are not appeals and are incapable of being consolidated. The two matters are misconceived and incompetent and are hereby struck out with costs to the respondent.
9. It is hereby ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 23<sup>RD</sup> DAY OF AUGUST 2024.**



**F. MUCHEMI**  
**JUDGE**

