



REPUBLIC OF KENYA



KENYA LAW
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**Directline Assurance Company Limited v Ngugi; Sidian Bank Limited (Interested Party)
(Civil Appeal E017 of 2023) [2024] KEHC 11423 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E017 OF 2023
DK KEMEL, J
SEPTEMBER 30, 2024**

BETWEEN

DIRECTLINE ASSUARANCE COMPANY LIMITED APPELLANT

AND

JULIA NJERI NGUGI RESPONDENT

AND

SIDIAN BANK LIMITED INTERESTED PARTY

RULING

1. Vide a notice of motion application dated 1st July 2024, the Applicant herein sought orders that this Court reviews and varies its order issued on 25th April 2023, directing the Applicant to deposit the decretal sum in an interest earning account in the names of the advocates for the Applicant and Respondent within 30 days and instead order that the Appellant is granted stay on condition that the Appellant deposits the entire decretal sum of Kshs. 5,720,246/= in Court within 30 days from the date of this ruling, and that it proceeds to issue a stay of execution of the judgement, decree and execution order arising out of Bungoma CMCC E229 of 2021 pending determination of the appeal. In the alternative, the Applicant seeks the court to enlarge time within which it can comply with the conditions imposed on 25th April, 2023.
2. The application is supported by grounds premised on the face of the motion and an affidavit sworn by Pauline Waruhiu, the head of claims and legal at the Applicant who deponed inter alia; that time to comply with the conditions imposed on 25th April 2023 elapsed due to correspondence between the counsels herein regarding the correct decretal amount and assessed costs; that the Respondent subsequently instructed auctioneers to execute the decree upon the lapse of the stay period; that the Respondent's counsel failed to avail the requisite documents in order to fast track the issue of the deposit; that the execution will paralyze the operations of the Appellant since the amounts involved is



quite substantial; that the Appellant is ready and willing to deposit the entire sums into court pending the determination of the appeal; that it is in the interest of justice that an order of stay of execution is granted in the circumstances so as not to render the appeal nugatory;

3. In response to the application, the Respondent swore a replying affidavit on 8th July 2024, wherein she termed the application as frivolous, vexatious and an abuse of court process, and that the same should be dismissed. According to her, the Appellant failed to adhere to the conditions issued for stay of execution to materialize as they never deposited the decretal amount as ordered on 25th April 2023, and that the 30 days having lapsed it was within her right to proceed and execute the decree. She further averred that the Appellant's conduct bordered on indolence and aimed at delaying the Respondent from realizing the fruits of the judgement.
4. In response to the Respondent's replying affidavit, the Applicant swore a supplementary affidavit vide Pauline Waruhiu, the head of claims and legal at the Applicant, dated 20th August 2024, wherein she averred that the Respondent acted against the Applicant in bad faith and cannot be permitted to go scot free. She averred that the delay to conform to the Court directions was not within the control of the Applicant and that they should not be victimized over the same. It was finally averred that the application is made in good faith.
5. Parties opted not to file and exchange submissions but relied on their rival affidavits.
6. From the application herein, the supporting affidavit, the Respondent's replying affidavit and the Applicant's supplementary affidavit, I find the only issue for determination is whether there is any sufficient reason to justify review of this Court orders as issued on 25th April 2023.
7. Section 80 of the *Civil Procedure Act* provides:
80. Any person who considers himself aggrieved –
 - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
8. In *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR it was held:-

“ 12. Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.”
9. In *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR the Court of Appeal held:-

“ Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.”... As repeatedly pointed out in various decisions of this Court, the words,



“for any sufficient reason” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”

10. The Court of Appeal in *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR also cited with approval the case of *Sarder Mohamed v. Charan Singh Nand Sing and Another* (1959) EA 793 where the High Court held that Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the section was deliberate.
11. Taking all the above factors into account and in order not to render the intended appeal nugatory as well as to give effect to the overriding objective of the Civil Procedure Act, I find and hold that the Applicant has fulfilled the requirement for review of stay orders issued on 25th April 2023. It is not in dispute that the learned counsels spent too much time in exchanging correspondences regarding the exact amount of the decretal sums plus assessed costs. The Appellant is still willing and ready to comply with the conditions imposed on 25th April 2023 if given time to do so. The Appellant has now sought for a quick solution namely that the sums be deposited into court. It is noted that the parties herein have spent considerable period trying to comply with the earlier directions. No prejudice will be suffered by the Respondent if the security is deposited into court pending determination of the appeal.
12. I hereby find the Applicant’s application dated 1st July 2024 is merited. The same is allowed. There be an order of stay of execution of decree made in Bungoma CMCC E229 of 2021-Julia Njeri Ngugi vs Directline Assurance Company limited & Another on the following conditions:
 - i. An order of stay of execution of the decree and all consequential orders arising from Bungoma CMCC No. E229 of 2021 is hereby granted pending determination of the appeal herein upon the Applicant/ Appellant depositing the entire decretal sum plus assessed costs in Court within seven (7) days of the date of this ruling failing which the stay shall lapse.
 - ii. As the appeal has already been admitted and that the Appellant has filed a record of appeal, this matter is now fixed for mention on 16th October, 2024 for directions on the disposal of the appeal.
 - iii. The costs hereof shall abide in the appeal.

Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER 2024

D. KEMEI

JUDGE

In the presence of :

Awino for Appellant/Applicant

Oriko for Anwar for Respondent

No appearance for Interested Party

Kizito Court Assistant

