



**Wanjiru v Munga (Civil Appeal E759 of 2021)  
[2024] KEHC 13068 (KLR) (Civ) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13068 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E759 OF 2021**

**JN MULWA, J**

**OCTOBER 31, 2024**

**BETWEEN**

**SIDI WANJIRU ..... APPELLANT**

**AND**

**ANN MUNGA ..... RESPONDENT**

**RULING**

1. Judgment in this appeal was delivered on 29/07/2024 by the Hon. Justice Kizito Magare allowing the appeal and thereby setting aside the lower court's judgment in Milimani CMCC no 1079 of 2018 delivered on 5/11/2021 dismissing the such with costs. Additionally, the court granted costs of appeal to the appellant assessed at ksh 55,000/=
2. By an application dated 29/08/2024, the Appellant Sidi Wanjiru moved this court for orders that the sum of ksh 250,000/= deposited in court as security pending hearing and determination of the appeal (now concluded) be released to her; citing provisions of Section 3A of the *Civil Procedure Act*; and her supporting affidavit she swore on an even date and grounds stated at the face of the application.
3. In opposing the application the Respondent filed a Replying Affidavit on 13/09/2024.
4. The court has carefully considered the application herein together with the opposing affidavit.
5. The lower court case judgment delivered on 17/09/2021 was set aside and the suit dismissed with costs. A perusal of the pleadings therein show that the plaintiff had sought mandatory injunction of ksh 450,000/= refund and ksh 713,190 general damages costs and interest.
6. This case having been dismissed the plaintiff was directed by this court (Magare J) to pay costs to the defendant. The court does not have certificate of costs for the lower court case, but the appeal was



dismissed with assessed costs at ksh 55,000/- on the appeal payable by the Respondent, Ann Munga to the appellant who was successful in the appeal.

7. Upon such background, the appellant who had undeniably deposited ksh 250,000/= in court as security on 26/10/2023 pending the hearing and determination of the appeal seeks that this deposit be released back to her.
8. The applicant has brought about matters that I believe are not for this courts consideration.
9. It is evident that the appeal having been concluded the deposit in court as security serves no purpose being held by the court.
10. The application is allowed with an order that the sum of ksh 250,000/= deposited in court on 26/10/2022 by the applicant Sidi Wanjiru be released to her through her M-pesa number of 0724 5XX XXX as stated in her supporting affidavit sworn on 29/09/2024, drawn by her advocates Cherop & Marete Advocates.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER 2024.**

**JANET MULWA**

**JUDGE**

