



**Ngure v Mediators Sacco Limited (Civil Appeal E214 of 2024)
[2024] KEHC 13331 (KLR) (Civ) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13331 (KLR)

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

CIVIL

CIVIL APPEAL E214 OF 2024

AN ONGERI, J

OCTOBER 29, 2024

BETWEEN

SAMMY NGUGI NGURE APPELLANT

AND

MEDIATORS SACCO LIMITED RESPONDENT

RULING

1. The applicant filed the application dated 14/2/2024 brought under Articles 50 & 40 of *the Constitution* of Kenya 2010 Section IA 1B 3A and 79G of the *Civil Procedure Act* Order 42 Rule 6 and Order 50 Rules 1 and 4 of the Civil Procedure Rules 2012 and all other enabling provisions of the law seeking the following orders;
 - i. That this matter be certified urgent and be placed before the Honourable Duty Judge for orders in the first instance and service be dispensed with in the first instance.
 - ii. That in the interim and pending^{^} the hearing and determination of this Application, this Honourable Court be pleased to stay execution of the final judgement, decree and/or any consequential orders/ processes thereto in the
 - iii. Co-operative Tribunal at Nairobi Civil Case No. 171/E180 of 2022 by the Respondent by himself, his servants, agents, employees and/or any other person authorized by him.
 - iv. That in the interim and pending the hearing and determination of this Appeal, this Honourable Court be pleased to stay execution of the of the final judgement, decree and/or any consequential orders/processes thereto in the Co-operative Tribunal at Nairobi Civil Case No. 171/E180 of 2022 by the Respondent by himself, his servants, agents, employees and/or any other person authorized by him.



- v. That this Honourable Court be pleased to set aside, vary, discharge and/or quash the orders issued by the Honourable Magistrate B. M. Kimemia (Chairperson) issued at Nairobi on 12th February, 2024 in the Co-operative Tribunal at Nairobi Civil Case No. 171/E180 of 2022 and all other consequential orders arising therefrom.
 - vi. That an order be issued directing the parties to appear before the Honourable Magistrate B. M. Kimemia (Chairperson) in the Co-operative Tribunal at Nairobi for the hearing and determination of Appellant's/ Applicant's application dated 9th February, 2024 on merits.
 - vii. That this Honourable Court be pleased to stay execution of the of the final judgement, decree and/or any consequential orders/ processes thereto in the Co-operative Tribunal at Nairobi Civil Case No. 171/E180 of 2022 by the Respondent by himself, his servants, agents, employees and/or any other person authorized by him pending the hearing and determination of the Appellant/ Applicant's application dated 9th February, 2024.
 - viii. That the cost of this application be in the cause.
2. The application is based on the ground on the face of it and supported by the affidavit of Sammy Ngugi Ngure dated 14/2/2024 in which he deposed that he is the Applicant in the instant application and as such competent to swear this Affidavit.
 3. That he is at the risk of losing his properties pursuant to the Orders of the Co-operative Tribunal at Nairobi issued on 12th February, 2024.
 4. That sadly, while issuing the said orders without granting the interim stay of execution, the he had on record an application to set aside the Interlocutory and/or Default Judgement and demonstrating the urgency of the matter following a proclamation notice that had been served upon me by the auctioneers as well as a draft defence and supporting documents demonstrating that the Appellant does not owe the Respondent any money as claimed.
 5. That he is advised by his advocates on record which advise he verily believes to be true that the Honourable Magistrate acted in flagrant abuse of known procedure, the law and good order since he had clearly demonstrated the urgency of the matter and even filed supporting documents thereof proving that he paid the alleged amount to the Respondent in full and was not indebted to the Respondent yet he had been served with a proclamation notice.
 6. That remarkably, the Learned Magistrate, knowing very well the implications of not granting the interim orders, ignored the prayers and the evidence on record and went ahead to issue a hearing date of 10th May, 2024, a timeframe when all the execution of the judgement will have been done by the Respondent owing to the fact that they have already started the execution process and therefore this matter ought to have been treated with the urgency as demonstrated in my Application to the Tribunal.
 7. That noteworthy, the warrants of attachment and the proclamation notice in question arises out of a default judgement in which he had not been served nor made aware of the existence of the suit at the Co-operative Tribunal at Nairobi.
 8. That he is advised by his advocates on record which advise he verily believes to be true that not issuing the interim orders to prevent this application being rendered nugatory and an academic process will be condemning him unheard contrary to the principles of natural justice.
 9. That he is aggrieved by the manner in which the Honourable Magistrate conducted herself in these proceedings wherein she acted in flagrant abuse of due process/procedure by denying him his right to fair hearing.



10. That as it is, his application, grounds set thereof and the supporting documents were not considered by the Honourable Court.
11. That he has clearly demonstrated that he does not owe the Respondent any money and his defence and supporting documents thereof raise triable issues and the Respondent through their auctioneers having already served a proclamation notice upon him, it would only be right and in the interest of justice to issue the interim orders so as not to render the suit nugatory.
12. That he craves the urgent intervention of this Honourable Court since he risks losing his property unfairly anytime on the strength of the impugned, unlawful and ex-parte orders of 12th February, 2024, over a debt that he denies owing the Respondent and the same is fully supported by the attached documents.
13. That the Respondents don't stand to suffer any prejudice if the orders sought herein are granted.
14. The application is not opposed since the respondent did not file any replying affidavit.
15. I grant stay of execution of the exparte judgment in case no. 171/E180 of 2022 pending interpartes hearing of the application dated 9/2/2024 at the Cooperative Tribunal.
16. Stay of execution of the of the final judgement, decree and/or any consequential orders/processes thereto in the Co-operative Tribunal at Nairobi Civil Case No. 171/E180 of 2022 is also granted pending the hearing and determination of this appeal on condition that the applicant continues to service the loan.
17. The costs to abide the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 29TH DAY OF OCTOBER, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

