



REPUBLIC OF KENYA



KENYA LAW
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**Githua v Kariuki (Civil Appeal E132 of 2023)
[2024] KEHC 15009 (KLR) (26 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E132 OF 2023
DO CHEPKWONY, J
NOVEMBER 26, 2024**

BETWEEN

EPHANUS MAARA GITHUA APPELLANT

AND

JANE WAMBUI KARIUKI RESPONDENT

RULING

1. This matter is for mention for parties to confirm compliance of directions issued and extended on 11th November, 2024.
2. Vide a Notice of Motion application dated 30th March, 2023, the Applicant/Appellant sought for orders that:-
 - a. Spent.
 - b. The Honourable Court to find the Memorandum of Appeal as properly filed.
 - c. Spent.
 - d. The Honourable Court to order a stay of execution of the Judgment/Decree delivered on 17th February, 2023 by Honourable Jacinta Orwa (SPM) sitting at Kikuyu in CMCC No.43 of 2019, pending the hearing and determination of the Appellant's appeal filed at the High Court of Kenya at Kiambu.
 - e. This Honourable Court allow the Applicant to furnish this Court with security in form of a Bank Guarantee from a reputable bank pending the full hearing and determination of this appeal.
 - f. Spent.
 - g. The costs of this application to abide by the outcome of the appeal.



3. The Application is premised on the grounds set out on its face and Supporting Affidavit sworn by Ephantus Maara Githua on even date.
4. On 12th July, 2023, counsel for the parties herein compromised the said application by Consent on the following terms:-
 - a. The Applicant/Appellant to deposit the entire decretal amount in a joint interest-earning account in the names of counsel for the parties within thirty (30) days from the date hereof.
 - b. The Draft Memorandum of Appeal filed on 19th May, 2023 be deemed as served upon the Respondent.
 - c. The Appellant to compile, file and serve a Record of Appeal within thirty (30) days from the date hereof.
 - d. The Deputy Registrar to call for and avail the original Record of Proceedings in Kikuyu Chief Magistrate's Court Civil Case No.43 of 2019.
 - e. Mention on 25th September, 2023 for parties to confirm compliance and further directions.
 - f. Failure to comply with Order (a) and (c) above, the stay orders to stand lapsed.
5. The period within which the Appellant was to comply with the Consent Orders issued on 12th July, 2023 were extended for a further thirty (30) days on 25th September, 2023 because the Appellant was yet to comply with the said orders. The matter was then fixed for further mention on 30th October, 2023. The court did not sit until 11th November, 2024 when the Appellant's counsel sought for another extension of time so he could avail proof of deposit of decretal sum and file a Record of Appeal. The court granted the Appellant further extension of fourteen (14) days with an order that the Consent Orders No.(a) and (b) would render the appeal dismissed within recourse to the Appellant. The matter was then fixed for mention today, 26th November, 2024.
6. When the matter came up for mention today to confirm compliance of the Consent Orders issued on 12th July, 2023, neither the Appellant nor his counsel were in attendance despite the directions and mention date having been issued in the presence of both counsel for the parties herein. There is even no explanation to explain their absence. Furthermore, upon listening to counsel for the Respondent, it has been indicated that the Appellants were yet to comply with the Consent Orders adopted on 12th July, 2023.
7. It is worth noting that the aid orders were self executing. This being the case, the Appellant having failed to comply with the Consent Orders adopted on 12th July, 2023, the appeal be and is hereby dismissed with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 26TH DAY OF NOVEMBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance by counsel for Applicant

M/S Akasi holding brief for M/S Gathoni counsel for the Respondent



