



REPUBLIC OF KENYA



**Odhambo v Kinyanjui (Miscellaneous Civil Case E811 of 2023)
[2024] KEHC 14723 (KLR) (Civ) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14723 (KLR)

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

**CIVIL
MISCELLANEOUS CIVIL CASE E811 OF 2023**

**TW OUYA, J
NOVEMBER 25, 2024**

BETWEEN

CAROLINE ONYANGO ODHIAMBO APPLICANT

AND

PAUL GICHUI KINYANJUI RESPONDENT

RULING

1. This is an application that was filed under certificate of urgency vide Notice of motion dated 6th September 2024 for orders.
 - i. Stay of execution and all other consequential orders of the judgement and/or decree by the Honorable Principal magistrate in Milimani Civil Suit No. E1323 of 2022 pending hearing of this application.
 - ii. That the Defendant/Applicant be granted orders allowing for extension of time within which to comply with the conditions for stay granted on 18th March 2024 requiring them to deposit Kshs. 1,500,000/= in Court by close of business 26th April 2024.
2. The main issue raised in the grounds is that the court clerk failed to bring the conditional orders to the attention of the advocate until after the lapse of time.
3. The Applicant has pleaded further that their client has been undergoing some financial constraints and has been unable to meet the condition ordered by court to deposit ksh.1,500,000/= in Court by 26th April 2024.
4. The above two issues are reiterated in the supporting affidavit with emphasis that the Applicants have an arguable appeal which stands to be prejudiced should execution proceed with prayer that this



application to be allowed to enable the applicants fully comply with the provision of security for costs which will be deposited in court.

5. That this court granted 30 days extension of time to allow the Applicant to not only comply but also for the parties to appear before court for directions on 14th October 2024. On 14th October, 2024 the Applicants were represented in court by counsel who informed court that they had duly served the Respondents who were absent. They had filed an affidavit of service. However, they had still not complied with the conditional stay orders and sought for 30 more days.
6. The Court granted an extension of 30 more days and directed that matter be mentioned on 14th November 2024. On 14th November 2024, the applicants were absent in Court but the Respondents were represented by counsel who moved the court for the application to be dismissed.
7. It was brought to the attention of the court that the first application of the same nature by the applicant had been dismissed on 14th March 2024. That it was after that dismissal that the Applicant filed the current application dated 5th September 2024 requesting for extension orders that had been issued.
8. Reference was made to prior application and orders that applicant deposits ksh.1,500,000/= in court as security by close of business 21st April 2024 pending hearing on 20th June 2024 upon which the Application was dismissed. That the current application is an abuse of the process of court and should be dismissed.
9. This court has considered the application by the applicant with the supporting affidavit and does not find any justifiable ground to continue extending stay in favour of the Applicant.
10. Besides, the court takes into account the fact that the matter before the court had already been determined and dismissed. It is in light of this that this court finds that this application not to have been brought in good faith and is tantamount to an abuse of the process of the court.
11. The applicant was in court when directions for mention were given for the date of 14th November 2024 and they are absent and still in default of the very orders they seek to extend.
12. This application is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF NOVEMBER, 2024

HON. T. W. OUYA

JUDGE

For Plaintiff: N/a

For Respondent: Ms. Murithi H/b For Mutinda

Court Assistant: Martin

