



**Okello v Standard Media Group & 3 others (Civil Case 215 of 2014)
[2024] KEHC 16415 (KLR) (Civ) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16415 (KLR)

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

**CIVIL
CIVIL CASE 215 OF 2014**

TW OUYA, J

DECEMBER 19, 2024

BETWEEN

LINDA OKELLO PLAINTIFF

AND

THE STANDARD MEDIA GROUP & 3 OTHERS DEFENDANT

RULING

1. The defendants/ Applicants filed a first post judgement application dated 30th September, 2023 (hereinafter the 1st application) and subsequently the present application dated 11th March, 2024.
2. The 1st application was allowed on the condition that the applicants/ defendants fulfill certain conditions to wit depositing of half the decretal amount in a joint interest earning account in the names of the parties' advocates. The order read in part:

That the Application dated 30th September, 2023 to wit;

- a. This Honourable court be pleased to extend and/or enlarge time within which to file and serve a Notice of Appeal against the decision of 17th August, 2023.
- b. Pending the hearing and determination of the intended Appeal, this Honourable court be pleased to stay the execution of the Judgement of 17th August, 2023 and subsequent decree or proceedings.
- c. Costs of this Application be provided for.

Is allowed on condition that half of the decretal amount is deposited in an interest earning account held jointly by counsel for both parties within 45 days from 29th January 2024.

That time for filing notice of appeal is extended by 30 days from 29th January 2024.”



3. The applicants have come to court with the instant Notice of Motion Application under certificate of urgency dated 11th March 2024 seeking to review the order of the Court dated 31st January 2024 which granted orders in the Applicant's Application dated 30th September 2023.
4. The instant Application is dated 11th March 2024 and seeks the following orders:
 - a. The application be certified as urgent and service thereof be dispensed with in the first instance.
 - b. This Honourable court be pleased to review its order of 29th January, 2024 by allowing the defendants to deposit half the decretal sum in court as opposed to a joint interest earning account.
 - c. This Honourable Court be pleased to review its order of 29th January, 2024 by extending limited time to deposit the directed half decretal sum and lodge the notice of appeal.
 - d. The notice of appeal herein be deemed as duly lodged upon payment of requisite court fees.
 - e. Costs for this application be borne by the applicants.
5. The application is supported by an Affidavit sworn on 11th March 2024 by Kevin Wakwaya, an advocate for the Applicant deponing inter alia, that the defendants are now ready to deposit the sum but the process of opening a joint account will place the depositing outside the 45 days which end on the 14th March 2024. They also depone that whereas the court granted the defendants 30 days to file the notice of appeal, instead of filing the notice appeal, an affidavit of service was erroneously filed. The Affidavit also annexes a copy of the intended Notice of Appeal.
6. The Plaintiff /Respondent opposed the application vide Replying Affidavit sworn on 31st May 2024 by Linda Okello the Plaintiff/Respondent. The Respondent depones that despite getting this order (31st January 2024) ex parte, the Applicant/Defendants did not bring its existence to the knowledge of the Respondent and have not abided by the same up to date. That despite obtaining a favorable order the Applicants out of their own indolence and carefree nature have failed to timely bring the order to the attention of the respondent's Advocates on record and that they also failed to correspond to the respondent's advocates in order to open the said joint account and deposit half the decretal amount as per the court directions.
7. That the failure to comply with court with the court orders is deliberate and the 45 days period within which the Applicants were to comply with the Order of 31st January 2024 lapsed on the 14th March 2024. They argue that the instant application is similar to the earlier one which granted them orders which they have failed to comply with. It is the plaintiff's contention that the Applicants have failed to explain why they did not comply with the orders of the court. The Applicant has not demonstrated any effort to open a joint bank account and that annexure KW2 is not addressed to the respondents' advocates. That contrary to what counsel has deponed, opening a joint bank account happens in less than 24 hours.
8. The Respondents contend that the instant application is an abuse of the process of the court and urges the court to dismiss it with costs to the respondent.

Analysis And Determination

9. The application was canvassed by way of written submissions by the rival parties which the court has duly considered alongside the pleadings filed herein. It is this court's view that the issues for determination are twofold:



- a. Whether this court has jurisdiction to review its orders granted on 29th January, 2024
 - b. Whether the orders sought by the Applicants are merited
10. The law on review is anchored on section 80 of the *Civil Procedure Act*, of the Civil Procedure Rules gives any aggrieved party a right to apply for a review of an order or decree of the court and, Order 45 Rule1 which provides for the conditions which must exist for a court to review its orders:
- a. Discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the of the applicant at the time the decree was passed or the order was made; or
 - b. mistake or error apparent on the face of the record
 - c. Other sufficient reasons
 - d. The Application must have been made without undue delay

11. The Defendants rely on section 80 of the *civil Procedure Act* which provides inter alia that:

“ Any person who considers himself aggrieved by a decree or order..... may apply for a review to the court which passed the decree or made the order and the court may make such order thereon as it thinks fit”

The Defendants submit that the above provision gives them unfettered right to apply for review discretion and that the court has jurisdiction to review its order.

12. They also rely on order 50 rule 6 on the power of the court to enlarge time and cite their willingness to comply with court directions, that the Plaintiff will not be prejudiced in any way, that they have timeously approached the court and have sufficiently explained their failure to comply with the previous court orders as a basis to consider their application. The main reason advanced by the Defendant for not complying with the earlier court orders is that opening of a joint bank account takes time.
13. This court takes note that this Application was made 40 days after the court order was granted and three days to the expiry of the 45days granted by the court. The defendants have not demonstrated any effort made towards complying with the said court order. The document attached KW2 is not addressed to any one in particular neither does it demonstrate any difficulty in opening a joint bank account.
14. The Plaintiff urges the court to find that ‘difficulty to open an account’ is not a ground for a review as provided under order 45 rule1 with reference to the Court of Appeal in *Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd (2014) eklr.*

“ The basic philosophy inherent in the concept of review is acceptance of human fallibility and acknowledgement of frailties of human nature and sometimes possibility if pervasion that may lead to miscarriage of justice. In some jurisdiction, courts have felt the need to cull court such power in order to overcome abuse of process of courts of miscarriage of justice.”

15. The court takes notice that the orders sought to be varied herein were obtained ex-parte and that the Defendant had the option informing the court if they preferred the option of depositing the amount in court as opposed to opening a joint bank account. Besides, the Plaintiff’s advocates have deponed and submitted that they were never served with the Order or contacted for the purposes of opening a



joint bank account as directed by the court. The alleged difficulty alluded to by the defendant is thus farfetched and not convincing.

16. The second limb of the orders was the extension of time for filing notice of appeal is by 30 days from 29th January 2024. The Defendants have not complied with this either. In their Affidavit sworn on 11th March 2024 their advocate Kevin Wakwaya depones that:

“whereas the court granted the Defendants 30days to file the notice of appeal, instead of filling the notice of appeal, an affidavit of service was erroneously filed.’

17. The main test in this issue is whether the reason advanced by the Defendants meets the preconditions to warrant an order for review. The orders granted by the court on 31st January 2024 were pursuant to orders 42 rule 6 of the Civil Procedure rules that security is to be provided by parties to as a condition for stay of execution.
18. Having failed to comply with the orders for security within 45 days as had been ordered and having failed to file the notice of appeal within 30 days expanded period, the Defendants are guilty of laches of delay and are no longer entitled to bring an equitable claim for review. The nature of the inadvertence advanced by the Defendant for failure to file the memorandum of appeal within the provided period is also wanting as a basis to consider their application.
19. The court notes further that the willingness alluded to by the defendant is not consistent with their conduct and is not demonstrated by any effort towards execution of the court orders.
20. This court has considered the pleadings and submissions by the rival parties in its entirety. The orders for review as prayed for are discretionary and dependent upon the court’s satisfaction with the reasons advanced by the aggrieved party. This court therefore finds that the Defendant/applicants have failed to offer justifiable basis for the consideration of the application and for granting of the orders sought.

Determination

Having made the above findings, this court determines that the reasons advanced by the applicant are not satisfactory to warrant a review by this court. The application is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19th DAY OF DECEMBER, 2024

HON. T. W. OUYA

JUDGE

ROA 14 days.

For Plaintiff:Ogada H/B Ojienda SC

For Respondent:

Court Assistant: Martin

