



REPUBLIC OF KENYA



KENYA LAW
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**Eden Millers v Wakhungu & 2 others (Civil Appeal 53 of 2019)
[2023] KEHC 2687 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 53 OF 2019
WM MUSYOKA, J
MARCH 24, 2023**

BETWEEN

EDEN MILLERS APPELLANT

AND

PHYLIS SWALI WAKHUNGU 1ST RESPONDENT

KASUNE ENTERPRISES LTD 2ND RESPONDENT

ANDREW OMUHAKA 3RD RESPONDENT

((An appeal arising from the judgment and decree of the Hon. Nyakundi, Senior Resident Magistrate, in Mumias SPMCCC No. 288 of 2012 of 29th April 2019))

RULING

1. I delivered a ruling herein on December 20, 2021, on the application dated September 18, 2019, for stay of execution pending appeal.
2. The last 2 paragraphs of the ruling read as follows:
 - “ 5. Consequently, I do hereby allow the application dated September 18, 2019, on the terms proposed. The stay order shall be on condition that the appellant deposits the entire judgment (sic) in court within the next thirty days of date of this order.
 6. The appellant shall file record of appeal within thirty days, after which the Deputy Registrar shall cause the appeal to be listed for directions for disposal.”



3. The appellant then filed a motion, dated March 1, 2022, seeking review of the orders of December 20, 2021, which required it to deposit the entire judgment money in court in 30 days, and to have it substituted with deposit of a car logbook, and for extension of time for compliance.
4. The deponent of the supporting affidavit expresses willingness to comply with the orders of the court, but complains that his advocates had let him down, which prohibited him from complying with the orders, hence the need to have the said orders reviewed, and he was availing a logbook for his motor vehicle as security.
5. The said application is opposed. There are grounds of opposition on record, dated May 17, 2022. The application is described as a ploy to delay the matter.
6. There is also an affidavit in reply, sworn by Phylis Swali Wakhungu, the 1st respondent. She avers that stay orders were granted, on December 20, 2021, and the appellant was required to deposit the entire judgment sum in court within 30 days. The application, dated March 1, 2022, is said to have been filed 90 days thereafter. She avers that the registration details of the motor vehicle, whose logbook is proposed to be deposited as security, has not been made available. She argues that the court is being invited to grant orders in a vacuum.
7. I granted stay orders on December 20, 2021, conditioned to the judgment sum being deposited in court. That condition has not been satisfied to date, and the appellant has given no reasons at all why that is so. As it is, the said orders cry for compliance.
8. The application, that seeks review of the orders of December 20, 2021, is based on an affidavit of a person who does not demonstrate the connection between him and the appellant, to warrant him bringing the application. Secondly, he gives no reasons why review is being sought. Thirdly, he gives no particulars of the vehicle whose logbook he proposes to deposit as security. I agree with the 1st respondent, the application is not well founded, and cannot provide basis for grant of the orders sought.
9. In view of what I have stated above, I find and hold that the application, dated March 1, 2022, has no merit, and exists for the sole purpose of being dismissed, and I hereby dismiss the same. As the orders, that I made on December 20, 2021, have not been complied with, I hereby discharge them. The 1st respondent shall have the costs of this application, and that dated September 18, 2019.

DATED, SIGNED and DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24th DAY OF March 2023

W. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Mutoka, instructed by Shivachi Mutoka & Company, Advocates for the appellant.

Ms. Tolloi, instructed by Namatsi & Company, Advocates for the 1st respondent.

