



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sagany & another v Chepkemoi (Civil Appeal E009 of 2021)  
[2023] KEHC 18135 (KLR) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E009 OF 2021  
SM MOHOCHI, J  
MAY 26, 2023**

**BETWEEN**

**ERICK NYAMBANE SAGANY ..... 1<sup>ST</sup> APPELLANT**

**JOHN KEBASO MASIEKA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ELIZABETH CHEPKEMOI ..... RESPONDENT**

**RULING**

**Introduction**

1. The Appeal was listed for hearing on the January 24, 2023 under the Service Week Initiative and was placed before Hon Justice Kizito Magare, the Appellants through Ms Mwangi argued the Appeal and the Court dismissed the Appeal for lack of merit with Costs of Kshs 100,000/- to the Respondents.
2. The Application before the Court is the Appellant’s Notice of Motion dated January 18, 2023 brought under Sections 3A, of the Civil Procedure Act, Orders 35 (1), 42 (11) and 51(1) of the Civil Procedures Rules and all enabling provisions of the Law.
3. The application seeks two (2) substantive prayers namely;
  - i. The Court be pleased to dismiss the Appeal for want of prosecution; and
  - ii. The Court be pleased to order, the forthwith release of, the entire decretal amount of Kshs 398,730/- plus interest, deposited in the Joint Account No xxxx, Equity Bank, in the Name Omanwa Mamwacha &co Advocates, and Kimondo Gachoka & Co Advocates to Omanwa Mamwacha &co Advocates.
4. The Application is grounded on the following six (6) grounds, that: -
  - i. The Appeal was filed on the February 16, 2021;



- ii. The Court on the February 3, 2022 ruled and ordered that the decretal sum be deposited in a joint interest earning account and that the Appellant files his record of Appeal within sixty (60) days;
  - iii. The Appellant have failed to take up any steps to have the Appeal heard and determined;
  - iv. The Appellants are not interested in prosecuting the Appeal;
  - v. The Respondent/Applicant has suffered prejudice; and
  - vi. Justice delayed is justice denied.
5. The Appeal was listed for hearing on the January 24, 2023 under the Service Week Initiative and was placed before Hon Justice Kizito Magare, the Appellants through Ms Mwangi argued the Appeal and the Court dismissed the Appeal for lack of merit with Costs to the Respondents.
  6. The instant Application is opposed by an undated replying Affidavit by Lawrence Mwangi Advocate filed on the March 21, 2023.
  7. Inter parte directions were issued on March 21, 2023 and March 28, 2023 where parties were directed to file written submissions within 15 days. As at the time of writing the ruling, no written submissions had been filed by the Parties.

#### **Analysis and Determination**

8. I have carefully considered the Application, and the replying Affidavit thereto. The only issue for determination is whether the Court can allow the Application long after the Appeal is determined.
9. The Appeal was determined on the January 24, 2023 and a judgment thereof delivered.
10. In view of the judgment of this Appeal, a prayer for dismissal is untenable while the second prayer is tenable and allowed in this instance.
11. From the foregoing an Order is hereby issued, for the forthwith release of, the entire decretal amount of Kshs 398,730/- plus interest, deposited in the Joint Account No xxxx, Equity Bank, in the Name Omanwa Mamwacha & Co Advocates, and Kimondo Gachoka & Co Advocates to Omanwa Mamwacha &co Advocates.

**DATED, & DELIVERED AT NAKURU, THIS 26TH DAY OF MAY, 2023**

**MOHOCHI S.M**

**JUDGE**

