



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Mwanthi & another (Civil Case E006 of 2021)
[2023] KEHC 19967 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E006 OF 2021
DO CHEPKWONY, J
JUNE 27, 2023**

BETWEEN

ELIZABETH MUKAMI KAMAU PLAINTIFF

AND

STEPHEN NZUE MWANTHI 1ST DEFENDANT

JOSEPH KARIUKI KWERI 2ND DEFENDANT

RULING

1. This matter was scheduled for pre-trial directions today the date having been fixed in the absence of counsel for the parties herein. However, neither the Defendants nor their counsel attended court. They did not even send representation to explain their absence.
2. In the circumstances, the Plaintiff counsel sought to have the interim orders of stay granted herein to be vacated and or set aside and the deponed sum of Kshs 1,000,000/= to be released to the Plaintiff/Defendant or part of the decretal suit order. This is because according to the Plaintiff/Respondent's counsel, the Applicants/Defendants had filed an application dated July 5, 2022 seeking for stay of Judgment and were issued the said orders on condition that they deposit a sum of Kshs 1,000,000/= in court, that they did not deposit the said sum within the timelines issued by court. They then filed for extension of the said timelines which order was granted and they which order was granted and they complied by September 19, 2022 when they sought to have a vehicle which had been held by the auctioneers released but were informed the same had already been disposed of. They were then directed by court to file a formal application in regard to the said motor vehicle, but to date they have not done so. It was pointed out that the Applicant/Defendant failed to attend court on September 19, 2022, December 13, 2022, April 17, 2022 and the date of this ruling. According to the Plaintiff's counsel, the Defendants appear not be in a hurry to dispense of this matter as they are enjoying exparte interim orders of stay, which they have sat on for close to one (1) year. The Plaintiff /Respondent's counsel then urged the court to vacate the interim orders of stay and instead order for the release of the



sum deposited as part of the decretal sum. Counsel has also sought for the Plaintiff/Respondent to be allowed to proceed with the execution proceeding that had already commenced.

3. The Defendant and their counsel having failed to attend court, there is no objection to the prayers sought by the Plaintiff/Respondent's counsel. The court thus proceeds to:-
 - a. Set aside and to vacate the interim orders granted herein on July 15, 2022.
 - b. Order that the sum of Kshs 1,000,000.00 deposited to court or security to be released to the Plaintiff/Respondent or part payment of the decretal sum within seven (7) days from the date hereof.
 - c. The Plaintiff/Respondent be at liberty to proceed with the execution process that already commenced herein.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JUNE, 2023.

D. O. CHEPKWONY

JUDGE

In the Presence of:

Mwenda – Court Assistant

Mr. Mutongi counsel for Applicant/Defendant

Ms. Ngochi counsel for Plaintiff/Respondent

