



**Mjomba Agencies Ltd v Munyua & another (T/a Munleo Hardware & Metal Fabircators)  
(Civil Appeal E501 of 2021) [2023] KEHC 21557 (KLR) (Civ) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21557 (KLR)

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

**CIVIL**

**CIVIL APPEAL E501 OF 2021**

**JN NJAGI, J**

**JULY 28, 2023**

**BETWEEN**

**MJOMBA AGENCIES LTD ..... APPLICANT**

**AND**

**GRACE SIMALO SAKUNTA ..... 1<sup>ST</sup> RESPONDENT**

**LEONARD MUNYUA ..... 2<sup>ND</sup> RESPONDENT**

**T/A MUNLEO HARDWARE & METAL FABIRCATORS**

**RULING**

1. The Applicant has filed an application dated November 22, 2022 seeking that this court enlarges time by 60 days for it to comply with the orders of this court issued on October 26, 2022.
2. The application is based on the ground that this court on the October 26, 2022 granted the applicant a stay of execution pending appeal on condition that it deposited the decretal sum of Ksh 548,000/= into court within a month of the delivery of the ruling failure to which the application stood dismissed.
3. The Application was supported by the affidavit of Urbanus Muli Maingi, a director of the Applicant sworn on November 22, 2022 where it was deposed that the Applicant company was facing financial constraints and was unable to raise the sum of Ksh 548,000/= in the 30 days granted by the court.
4. The application was opposed by the Respondent vide the replying affidavit of their counsel, Rosemary W Chege sworn on November 28, 2022 wherein she deposes that the Applicant had in its affidavit dated August 25, 2020 indicated to the court that it was ready to abide by the conditions that the court would impose to grant stay of execution of the decree. Further that the Applicant's director has been filing parallel applications before different courts seeking stay of execution of one and the same decree either under the guise of his person and or corporate identity. That having failed to meet conditions



for stay herein, he has filed a parallel application before another court of concurrent jurisdiction under file No Nairobi HCCA E 210 of 2022 seeking stay of execution of the same decree. A copy of the application dated November 11, 2022 was annexed to the replying affidavit and marked “RWC2.” It was averred that the application herein is in bad faith and is an abuse of the process of the court.

5. Directions were given for the application to be canvassed by way of written submissions. The advocates for the Applicant filed their submissions but I have not seen any submissions from the advocates for the Respondent.
6. The Applicant submitted that the court in an application of this nature has unfettered discretion to make orders that promote access to justice as stipulated in Article 48 of the Constitution of Kenya, 2010. That where a court makes orders that attaches conditions that a party cannot meet such orders may impede access to justice. The Applicant relied on the Supreme Court decision in the case of Westmont Holding v Central Bank of Kenya where the court observed that the Court of Appeal by requiring Westmont to deposit 38 million as security for costs impeded access to justice.
7. It was submitted that the right to prosecute the appeal shall be defeated if owing to matters beyond the control of the Applicant, the appeal is dismissed because it cannot raise the decretal sum. That this will be an infringement of Article 48 of the Constitution.
8. I have considered the grounds in support of the application, the grounds in opposition thereto and the submissions. This court on the 26<sup>th</sup> October granted the Applicant orders for stay of execution pending appeal on condition that it deposited with the court the decretal sum of Ksh 548,000/= within a month of the delivery of the ruling failure to which the appeal stood dismissed. Before the 30 days were over the Applicant through its director approached this court with a request to extend the period by 60 days on the ground that the company was facing financial constraints and was unable to raise the decretal sum in the one month granted to it by the court. The Respondent opposed the application on the ground that applicant has been filing parallel applications in other courts seeking to stop the execution of the same decree. That the instant application is in bad faith and an abuse of the court process.
9. The court has noted that the director of the Applicant, Urbanus Muli Maingi, in his supporting affidavit in the application for stay of execution dated August 25, 2021 deposed that the Applicant was a stable company with ability to settle the decree in the unlikely event of losing the appeal and therefore they were ready and willing to abide by such conditions as the court may impose. The said director now says that the company is not able to raise the decretal sum as security in court. The director however did not in the first place tell the court why he lied that the company is stable and was capable of raising the decretal sum. At the time that the director deposed the affidavit he knew how much the decree was and whether or not the Applicant was in a position to raise the money stated in the decree. It is clear that the director either deliberately deceived the court so as to obtain the orders for stay of execution or the Applicant is deliberately refusing to pay the decretal sum.
10. The court has also noted that after it granted the applicant time in which to deposit the decretal sum with this court, its director went ahead to file another Civil Appeal in Milimani HCCA No E210 of 2022 seeking for orders of injunction against the Respondents without disclosing that this court had already granted the Applicant company orders for stay of execution, albeit with conditions. The director of the Applicant has not explained to this court why he filed another appeal before the same court over the same subject matter. It is clear to me that the Applicant has been employing tricks to delay the execution of the decree.
11. The Applicant is seeking for a discretionary order to extend time to deposit the decretal sum. The applicant lied to the court that it is financially stable and was in a position to abide by any conditions that the court may impose. It is the view of this court that the Applicant is employing delaying tactics



to evade the execution of the decree. The Applicant has not demonstrated that it is deserving of the orders sought. In the premises, the application dated November 22, 2022 is dismissed with costs to the Respondent.

**DELIVERED VIRTUALLY, DATED AND SIGNED AT MARSABIT THIS 28<sup>TH</sup> JULY 2023.**

**J. N. NJAGI**

**JUDGE**

**In the presence of:**

No appearance for Applicant

Miss Chege for Respondents

Court Assistant – N/A

