



REPUBLIC OF KENYA



**Murangi v Mwangi (Civil Appeal E66 of 2022)
[2023] KEHC 21336 (KLR) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E66 OF 2022
LM NJUGUNA, J
AUGUST 9, 2023**

BETWEEN

MARY RITA MURANGI APPLICANT

AND

MARGARET MUTHONI MWANGI RESPONDENT

RULING

1. The applicant has moved this court vide Notice of Motion dated February 1, 2023 seeking orders that:
 - a. The honourable court be pleased to enlarge time within which the applicant herein is supposed to deposit sum of Kshs 500,000/= to the court account;
 - b. The ruling and order of this honourable court delivered on the December 14, 2022 directing the applicant to pay the sum of Kshs 500,000/= to the court's account within 45 days be reviewed, set aside and/or altered and thereafter substitute the same with reasonable period of at least 120 days;
2. The grounds upon which the application is premised are that the applicant was allowed 45 days within which to deposit Kshs 500,000/= into the court account being the decretal sum arising from Embu High Court Miscellaneous Application No 29 of 2022. That at the time when the application was being filed, the time had already lapsed and would she like to dispose of title number Kirinyaga/Mutito/T.6B and use the proceeds thereof to make the deposit. That unless the orders sought herein are granted, the appeal will stand dismissed.
3. The applicant had sought leave to file the appeal out of time and the same was granted on condition that the decretal amount be deposited in court within 45 days and the appeal be filed within 30 days of the ruling. That the appeal has been duly filed but the deposit is yet to be made as the applicant is still looking for the money. That an additional 120 days would be sufficient for her to raise the money through sale of land. That without these orders, she is apprehensive that the appeal will be rendered as a



- non-starter to her disadvantage. That the appeal has merit and if the orders are granted the respondent will not be prejudiced.
4. The respondent filed a replying affidavit in response to the application, terming it as a classic case of abuse of the court process, targeted at denying the respondent the right to enjoy the fruits of her judgment. That the application is meant to hoodwink the court to enlarge the time for the applicant to comply with the orders which had been granted conditionally. That if it is true that the applicant wishes to raise the decretal sum through sale of a property, then she should have produced documentation proving that she has begun the process of liquidating the property. That the said application does not conform with the requirements for stay of proceedings, review and/or setting aside as provided for under the [Civil Procedure Act](#) and [Civil Procedure Rules 2010](#) and the applicant is not bound to suffer anything if the orders are not granted. The court was urged to strike out this application because sufficient cause has not been demonstrated.
 5. The applicant filed a supplementary affidavit stating that she filed the application in good faith and she is not represented because she cannot afford it. She produced a copy of extract of minutes for Kirinyaga County Council plot No Mutitu/T.6B marked as MRM1 showing that the property is in her name. That she was served with a Notice to Show Cause which is coming up for hearing in the lower court on September 23, 2023. She stated that she is willing and ready to deposit Kshs 250,000/= to the court and it is fair that the appeal be heard on merit.
 6. The application was canvassed by way of written submissions and both parties complied.
 7. In her submissions, the applicant stated that she is not using this application to waste the court's time but rather to seek more time from the court to raise the amount through liquidating her property, or a review of the deposit amount to Kshs 250,000/=. That when the matter was mentioned before the Deputy Registrar, she was advised that only this court had the powers to issue such orders. She submitted that justice must not only be meted on the party who succeeds in a suit but also to the party who is aggrieved. She reminded the court that it has power to grant her request.
 8. In the respondent's submissions she relied on Supreme Court decision in the case of [Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 Others](#) (2013) eKLR where the court discussed the principle of finality and when a court becomes *functus officio*. That this court has become *functus officio* and is barred from re-opening the matter in order to grant the orders. That the court expressed itself with finality on the conditional orders granted in Embu High Court Miscellaneous Application No 29 of 2022 and the applicant should pursue appeal of the decision and not a review. It was her submission that court orders are not made in vain and must be obeyed and not be trashed with impunity as was held in the case of [Shimmers Plaza Limited v National Bank of Kenya Limited](#) in Civil Appeal No 33 of 2012 and the Indian case of [T.N. Gadavarman Thiru Mulpad v Ashok Khot and another](#) (2006) 5 SCC.
 9. It was her submission that the orders the applicant has sought for, are discretionary and cannot be granted as of right, as was stated in the case of [Nicholas Kiptoo Arap Salat Vs Independent Electoral & Boundaries Commission & 7 others](#) (2014) eKLR. The respondent submitted that the applicant failed to demonstrate that she is in the process of disposing the property and also that she will suffer if the orders are granted. She termed the application as a disguise for stay of execution. She relied on section 7 of the [Civil Procedure Act](#) and the case of Nancy Wakuthii Kago v Julia Muthoni Kiura Embu HCCA No 8 of 2019 to state their case that the court has already concluded its role by allowing conditional stay.



10. I have considered the arguments herein and the competing submissions, and the issue for determination is whether or not the court should enlarge time and/or grant review of its orders emanating from the ruling in Embu High Court Miscellaneous Application No 29 of 2022.
11. In the said ruling, this court issued orders of stay of execution of the decree arising from the decision in Chief Magistrate’s Court at Embu Civil Case No 94 of 2019 pending appeal. The conditions were that the appeal be filed within 21 days of the said ruling and that the whole decretal sum be deposited in the court within 45 days of the ruling. The timeline for the latter has since passed and the applicant now seeks extension of time to comply. The conditions were set based on order 42 rule 6(2)(b) of the [Civil Procedure Rules](#).

12. Section 95 of the [Civil Procedure Act](#) provides for the power of the court to enlarge time as follows:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

Order 50 rule 6 of the [Civil Procedure Rules 2010](#) also provides for enlargement of time as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

13. Section 80 of the [Civil Procedure Act](#) provides for review as follows:

“Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

14. The applicant submitted that she is able to deposit half of the decretal amount in court. The court in Embu High Court Miscellaneous Application No 29 of 2022 gave the conditional orders for stay of execution having in mind security for due performance in order to avoid wasting judicial time. In the case of [HGE vs SM](#) [2020] eKLR the court stated:

“In *Gianfranco Manenthi & another v Africa Merchant Assurance Company Ltd* [2019] eKLR, the court observed:

“... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security.



15. On the strength of the abovementioned sections of the *Civil Procedure Act* and *Rules*, I am inclined to consider the application for enlargement of time and review of the ruling. In my view, the applicant is not refusing to pay but rather, she is seeking for more time to raise the full amount. The applicant also submitted that she is ready to deposit half of the decretal amount, which is a sign of good faith. In the case of *Vishva Stone Suppliers Company Limited Vs RSR Stone [2006] Limited* [2020] eKLR the applicable principles for enlargement of time were summarized as follows:
- a. Extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court.
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
 - d. Whether there is reasonable reasons for the delay, the delay should be explained to the satisfaction of the court.
 - e. Whether there will be any prejudice suffered but the Respondent of the extension if the extension is granted.
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
16. The applicant has submitted that she intends to sell a property in order to raise the decretal amount. However, the fact that she has confirmed that she is ready to deposit half of the decretal amount, calls for exercise of discretion of the court.
17. Therefore, in the interest of justice and on the basis of Article 159(2)(d) of the *Constitution of Kenya, 2010* and Sections 1A, 1B and 3A of the *Civil Procedure Act*, I shall allow this application and make an order that:
- a. The Applicant to deposit Kshs 300,000/= in court within 14 days of this ruling failing which the appeal shall stand dismissed; and
 - b. The costs of this application be borne by the applicant in favour of the respondent.
 - c. Since the appellant has filed the record of appeal, the appeal to be prosecuted within 120 days from the date of this ruling failing which it shall stand dismissed.
 - d. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF AUGUST, 2023.

L. NJUGUNA

JUDGE

