



**Motari & another v Onserio & 4 others (Miscellaneous Civil Suit  
E001 of 2023) [2023] KEHC 27400 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 27400 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
MISCELLANEOUS CIVIL SUIT E001 OF 2023  
F GIKONYO, J  
NOVEMBER 27, 2023**

**BETWEEN**

**EDWIN MOTARI ..... 1<sup>ST</sup> APPLICANT**

**DAVID WACHIRA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**WILFRED METOBO ONSERIO ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH NDEGE NYABAYO ..... 2<sup>ND</sup> RESPONDENT**

**PLATINUM CREDIT LTD ..... 3<sup>RD</sup> RESPONDENT**

**SERAH NJOKI T/A SANJOMU AUCTIONEERS ..... 4<sup>TH</sup> RESPONDENT**

**JARED OMBATI T/A HARAK AUCTIONEERS ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

**Twining of applications**

1. Two motions are before the court. Both are dated 1<sup>st</sup> February, 2023. The first application is seeking leave to file appeal out of time. The second; is seeking temporary as well as mandatory injunction against the 3<sup>rd</sup> respondent.

**Leave to file appeal out of time**

2. The appellate court may admit an appeal filed out of time as long as it is satisfied that there was good or sufficient cause for not filing the appeal in time.
3. The ruling subject of the application was delivered on 14<sup>th</sup> September 2022. The application for extension of time was filed on 2<sup>nd</sup> February 2023. There is a considerable period of time that lapsed before the application herein was filed. The 1<sup>st</sup> applicant seems to suggest that the delay was caused by



the conduct of the 1<sup>st</sup> respondent who kept on promising that once he clears the outstanding loan for which the items were distressed, he would release the items to him. The respondents have vehemently opposed the applicant's claim on the items in question. Therefore, the explanation given of the delay cannot be sufficient reason in the sense of the law for which leave to appeal out of time could be given. Accordingly, the application for leave to appeal out of time is dismissed with no order as to costs.

**Injunctions: temporary and mandatory**

4. The application for temporary and mandatory injunctions is a saddle upon the application for leave to appeal out of time. In light of the result on the latter application, the former falls by the way side.
5. Nonetheless, the temporary injunction sought was granted by the trial court in the exact terms sought in the application now before the court. A court of law should never issue unnecessary or orders in vain or engage in duplication of effort.
6. The mandatory injunction sought in the nature of release of the attached goods to the 1<sup>st</sup> applicant should ordinarily be the final order in the intended appeal; and may not be issued at interim stage except where there are exceptional circumstances which is absent here.
7. For those reasons, the application is dismissed with no orders as to costs.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**F. Gikonyo M.**

**Judge**

**In the presence of: -**

1. Court Assistant – Otoro
2. Applicant – Present
3. M/s Cheruto for 1<sup>st</sup> & 2<sup>nd</sup> Respondents - Present

