



REPUBLIC OF KENYA



**Nabutola & another v Kinyanjui & another (Civil Appeal E213 of 2022)
[2023] KEHC 26823 (KLR) (Civ) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26823 (KLR)

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

**CIVIL
CIVIL APPEAL E213 OF 2022**

**AN ONGERI, J
DECEMBER 22, 2023**

BETWEEN

LUASI NABUTOLA 1ST APPELLANT

REBECCA MWIKALI NABUTOLA 2ND APPELLANT

AND

MARY WAMBUI KINYANJUI 1ST RESPONDENT

WYCLIFF MWANGI KANYINGI 2ND RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated 30/8/2023 seeking extension of time to deposit the decretal sum by 45 days.
2. The application is based on the grounds that the applicant was unable to deposit the balance of the decretal sum due to unavailability of the file.
3. That on 12th July 2023 the court ordered the appellants to deposit the balance of decretal amount kshs.1,202,308.00 in court.
4. That we wrote the letter dated 14th July, 2023 to the Deputy Registrar invoice requesting for the invoice of ksh.1,202,308.00 and filed the letter on the E filing portal on the 17th July, 2023.
5. That our representative visited the registry to get the invoice, but he was told that the court file which has a mention dated of 26th September, 2023 could not be traced.
6. That our representative has been in the registry several times to trace the physical file to enable the invoicing staff issue the invoice since he was told that the invoice can only be issued once the physical file is available in vain.



7. That our representative was only able to trace the court file on the 29th August, 2023 and upon asking for the invoice, the invoicing staff indicated to him that he could not issue the same since the 45 days given by the court had since expired and was past 2 days.
8. That our client who was to deposit the said amount encountered challenges depositing the amount due to unavailability of the invoice occasioned by the untraceable court file.
9. That we seek leave to the court to further extend the 45 days granted to deposit the balance of the decretal sum of kshs.1,202,308.00
The costs of this application to abide the outcome of the appeal.
10. The respondent did not file submissions as directed.
11. I allow the application dated 30/8/2023 on the following grounds;
 - i. That the balance of the decretal sum is deposited in court within 30 days of this date.
 - ii. That the appeal is prosecuted within 90 days of this date failure to which the appeal is dismissed automatically with costs to the respondents.
 - iii. The costs of the application to abide the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF DECEMBER, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

