



REPUBLIC OF KENYA



KENYA LAW
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**Kahawa Sukari Limited v Munene (Environment and Land Appeal
34 of 2019) [2023] KEELC 17832 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 34 OF 2019**

BM EBOSO, J

MAY 31, 2023

BETWEEN

KAHAWA SUKARI LIMITED APPELLANT

AND

JOYCE NJERI MUNENE RESPONDENT

(Being an Appeal arising from the Judgment of Hon G. Omodho (Senior Resident Magistrate) delivered at Thika Chief Magistrate Court on 27/3/2019 in Thika Chief Magistrate Court Environment and Land Case No 17 of 2018)

RULING

1. This court [Eboso J] rendered a judgment in this appeal on October 11, 2022. The court allowed the appeal and disposed it in the following verbatim terms:

“In the end, this appeal succeeds on the above grounds and is disposed in the following terms:

- a. The Decree of the Trial Court in Thika Chief Magistrate Court Environment and Land Case No 17 of 2018 are hereby set aside and is substituted with an order directing the defendant in the said suit to refund to the plaintiff in the said suit the sum of Kshs 900,000 together with interest at court rate from the date of filing the said suit.
 - b. An order that parties to the said suit shall bear their respective costs of the suit.”
2. Three (3) months later, the respondent brought a motion dated 13/1/2023 on the platform of this dispose appeal inviting this court to issue an order of stay of execution and direct that the decretal sum be satisfied through monthly installments of Kshs 100,000. The said application is the subject of this ruling.



3. The application is supported by an affidavit sworn on 13/1/2023 by Alice Wacheke Muiruri in which she depones that owing to the difficult economic times occasioned by Covid 19, the appellant is only able to satisfy the decree through monthly installments. She added that the appellant had started satisfying the decree. She exhibited a cheque of Kshs 100,000 together with a forwarding letter dated 3/11/2022.
4. At the hearing of the application on 25/5/2023, Ms Ngereba, Counsel for the appellant reiterated the above and added that this court was the proper court to dispose the application because it is the court which issued the decree. Counsel referred the court to order 22 of the *Civil Procedure Rules*.
5. The court record does not bear any response from the respondent. At the hearing of the application, Ms Muthiani urged the court to avoid wastage of time and invited the court to issue appropriate orders on how the decretal sum should be paid.
6. The court has considered the application alongside the parties' oral submissions. This court exercised appellate jurisdiction in this matter. The judgment and decree of the trial court were set aside and substituted with an award and decree in terms of the disposal orders made in this appeal. The platform for execution of the said decree is the suit in which the trial court rendered a judgment. This appeal is not the platform on which to execute the decree.
7. Secondly, the question as to whether the appellant should be indulged to satisfy the decree in monthly instalments is one that should be considered and determined by the court executing the decree. The jurisdiction of this court was limited to determining the issues that were raised in the appeal.
8. For the above reasons, the application dated 13/1/2023 is struck out on the ground that this court is not the proper court to consider and determine the application. For avoidance of doubt, the applicant shall be at liberty to canvass a similar application in the court executing the decree if they so desire. There shall be no order as to costs of the application.
9. The Court Registry is directed to refrain from entertaining any applications for execution in the appeal files. Execution should instead be carried out in the trial court file.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 31ST DAY OF MAY 2023

B M EBOSO

JUDGE

In the Presence of: -

Ms Ngereba for the Appellant

Ms Muthiani for the Respondent

Court Assistant: Osodo/Hinga

