



Leopard Rock Mico Limited v County Government of Meru (Miscellaneous Application 23 of 2020) [2022] KEHC 11286 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 11286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION 23 OF 2020**

TW CHERERE, J

MAY 26, 2022

BETWEEN

LEOPARD ROCK MICO LIMITED APPLICANT

AND

COUNTY GOVERNMENT OF MERU RESPONDENT

RULING

- 1) By an order dated 22nd day of January 2021, Otieno J allowed the Applicant's application dated February 6, 2020 on the following terms:
 - 1) That the final award by the sole arbitrator, Calvin Nyachoti, Chartered Arbitrator, dated 19/12/2019 in the sum of Kshs 329,633,985, being the cost of facilities built by the applicant and Kshs 7,436,500, being the cost of movable assets, making an aggregate award of Kshs 339,070,485 be recognized as binding and enforceable between the parties herein and a decree be issued in accordance therewith.
 - 2) The costs of these proceeding are equally awarded to the applicant.
- 2) Subsequently, by an order dated December 16, 2021, Otieno J granted an order of stay of execution of the judgment on condition that the intended appeal by the respondent is prosecuted within five months from the date of the ruling and upon the respondent being granted leave to appeal by the Court of Appeal.
- 3) The record reveals that the respondent filed Nyeri Civil Application No. E011 of 2021 and Civil Application No. E012 of 2021 seeking orders for extension of time to appeal this court's ruling dated January 22, 2021. By an order dated March 18, 2022, the application in Nyeri Civil Application Nos. E011 of 2021 was dismissed on the ground that the Respondent had not filed a Notice of Appeal.



- 4) Against the backdrop of the order by the Court of Appeal, applicant filed a Notice Motion dated March 21, 2022 brought pursuant to article 48 of the Constitution of Kenya, section 1A, 1B, 3A of the Civil Procedure Act, Order 51 rule (1) of the Civil Procedure Rules and all enabling provisions of the law seeking the following orders:
- 1) Spent
 - 2) That pending the hearing and determination of this application inter-parties, the honorable court be pleased to vacate the order of stay issued on December 16, 2021 forthwith.
 - 3) That the costs of this Application be provided for.
- 5) The Application is based on the grounds on its face and on the supporting affidavit sworn by Michel Jean Andre Dechauffour the Managing Director of the applicant who reiterates the background of this case as detailed herein above. He contends that in view of the fact that respondents have not filed any appeal, this court's orders of stay of execution are no longer tenable and automatically lapsed and it is in the interest of justice that the order be vacated.
- 6) The application is opposed on the basis of replying affidavit sworn on May 10, 2022 by Kiautha Arithi, the respondent's County Attorney. He concedes that the Court of Appeal dismissed the respondent's application for leave to appeal filed in Nyeri Civil Application No. E011 of 2021. He however contends that a similar application in Nyeri Civil Application No. E02 of 2021 seeking similar orders is still pending and respondent is therefore still within the terms of the Orders issued on December 16, 2021.
- 7) I have considered the notice of motion in the light of the affidavits on record, applicant's and respondent's submissions dated April 11, 2022 and May 17, 2022 respectively. I have also considered the order issued on December 16, 2021 which stated as follows: -
1. That stay of execution of the decree dated June 18, 2021 and issued on June 24, 2021 is hereby granted on condition:
 - a. That the Applicant does everything to have the appeal prosecuted within five months from the date of this ruling.
 - b. That once the applicant's application seeking leave to appeal to the Court of Appeal is prosecuted, the fate of stay granted shall abide the outcome of the said application. For avoidance of doubt, if the application for leave fails, the stay granted here shall lapse for at that time there would be no appeal to premise the stay.
- 8) The documents provided by the parties disclose that Respondent filed two applications in the Court of Appeal being Civil Application No. E011 of 2021 and Civil Application No. E012 of 2021 seeking leave to file an appeal amongst other prayers. As stated above, only Civil Application No. E011 of 2021 has been determined with the Court of Appeal dismissing it. Further it would appear that the said application was heard at the instance of the applicant vide two letters dated December 17, 2021 and February 16, 2022 to the President of the Court of Appeal requesting for a hearing date on priority basis.
- 9) The orders of December 16, 2021 required the respondent to take proactive steps to have the applications for leave to appeal prosecuted without delay. No doubt the respondent appears to have been indolent and took no steps whatsoever to have the applications prosecuted. Even as at the time of hearing the application, the Respondent did not demonstrate that it had taken any steps to prosecute the pending application and the contention that the applicant has misapprehended the orders issued on December 16, 2021 is therefore unfounded.



- 10) Whereas I agree with the respondent that the orders of December 16, 2021 is self-explanatory, it is not out of order for the applicant to seek a specific order discharging the stay order as it has.
- 11) From the foregoing analysis, I do not find it difficult to agree with the Applicant that there exists no appeal to premise the order of stay. Consequently, the Notice Motion dated March 21, 2022 has merit and it is allowed in the following terms: -
 - 1) The order of stay issued on December 16, 2021 be and is hereby vacated forthwith.
 - 2) respondent shall pay the costs of this application

DATED IN MERU THIS 26TH DAY OF MAY 2022

T.W. CHERERE

JUDGE

Appearances

Court - Morris Kinoti

For Applicant - Mr. Wanyama for Manyonge Wanyama & Associates LLP

For Respondent - Mr. Mogire for Munga Kibanga & Co. Advocates

