



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Prime Rock Company Ltd v Ndegwa (Civil Appeal 2 of 2017)
[2022] KEHC 12667 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 2 OF 2017
FN MUCHEMI, J
JULY 28, 2022**

BETWEEN

PRIME ROCK COMPANY LTD APPELLANT

AND

JOSEPH MWANGI NDEGWA RESPONDENT

RULING

1. On January 25, 2019, Matheka, J in her ruling directed the respondent to pay the requisite further court fees in Nyeri CMCC no 46 of 2015 which gave rise to this appeal. In that case judgement was entered in favour of the respondent for general damages of kshs 500,000/= plus costs of the suit.
2. The honourable judge had examined and applied all the relevant provisions of the law and found that the respondent has an obligation to pay the further court fees and cannot revisit the responsibility on the appellant. The judge directed that this appeal be mentioned after three months from the date of delivery of the ruling. The period of three months was meant to give the respondent time to pay.
3. The appeal was mentioned on April 16, 2019 and yet the fees had not been paid. The case has since then been mentioned more than five (5) times either for the parties to sort out the issue or for the respondent to pay the further court fees. The respondent has consistently told the court through his counsel that he cannot afford to pay the court fees. This court was called upon to give directions on the stalemate.
4. It suffices to say that under rule 79G, the respondent bears the responsibility to pay the further court fees as Matheka J stated in her ruling on January 25, 2019. The respondent by failing to pay the fees has put this appeal in abeyance for about three (3) years. Failure to pay further court fees though a rear occurrence is a bit unsettling when it happens. It renders the appeal stagnant because the record of appeal will not be complete under section 79G of the *Civil Procedure Act* without a decree.
5. In this appeal, delay has been caused by the failure to clear the said fees in Nyeri CMCC no 46 of 2015.



6. The court has inherent power to make orders or give directions to end the stalemate like the one between the parties herein. However, the respondent must not be allowed to benefit from such orders or directions. The court may order that a decree for the sole purpose of facilitating the hearing of the appeal do issue. In my considered view, it has become necessary for this court to intervene in this appeal.
7. Consequently, I hereby direct that a decree do issue in Nyeri CMCC no 46 of 2015 only for the purpose of facilitating the hearing of this appeal. The appellant is hereby granted fifteen (15) days to obtain the decree and file a supplementary record.
8. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 28TH DAY OF JULY, 2022.

F MUCHEMI

JUDGE

RULING DELIVERED THROUGH VIDEO LINK THIS 28TH DAY OF JULY, 2022.

