



**Njuguna & another v Njagi (Civil Appeal E241 of 2022)
[2022] KEHC 12290 (KLR) (Civ) (19 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12290 (KLR)

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

CIVIL

CIVIL APPEAL E241 OF 2022

JK SERGON, J

AUGUST 19, 2022

BETWEEN

GIDRAPH MUNGAI NJUGUNA 1ST APPLICANT

JOSEPH NGINYO 2ND APPLICANT

AND

BERNARD MWANGI NJAGI RESPONDENT

RULING

1. By an application dated February 2, 2022, the applicants were on March 25, 2022, granted a temporary order of stay of execution of the decree on condition that they provide a bank guarantee as security for the due performance of the decree within 45 days.
2. The applicants did not comply with the aforesaid order within the time frame given by the court. The applicants are now before this court vide the motion dated July 13, 2022 whereof they seek for *inter alia* the extension of time within which the applicants can comply with the condition for the grant of the order for stay of execution issued on March 25, 2022.
3. The applicants filed the affidavit sworn by Harriet Sang in support of the motion. When served with the motion, the respondent filed the replying affidavit he swore to oppose the application.
4. It is the submission of the applicants that they were unable to comply with the stay condition within 45 days since the parties were busy negotiating for an out of court settlement which failed to bore fruits. The applicants further averred that they partially complied with the court order by filing the appeal on time.
5. In response to the applicants assertion the respondent denied that there were any ongoing negotiations to settle the matter out of court. The respondent further pointed out that the instant appeal was filed



out of time without obtaining leave to do so. It is pointed out that this appeal was filed on April 19, 2022 outside the period fixed by the court.

6. Having considered the rival submissions, it is not in dispute that the applicant did not provide security for the due performance of the decree within 45 days from the date of issuance of the court order. The main reason for their failure to comply with the court order is that the parties were negotiating for an out of court settlement. The averment is denied by the respondent.
7. I find the reason given not plausible. Even if it is true that the parties were negotiating for an out of court settlement, that in itself cannot be a good reason not to comply with the court order. It is also apparent that the appeal may have been filed out of time without the applicants seeking for leave prior to filing the appeal.
8. In the end, I find the motion dated July 13, 2022 to be without merit. The same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 19TH DAY OF AUGUST, 2022.

.....

J K SERGON

JUDGE

In the presence of:

..... for the applicant

..... for the respondent

