



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gandhi v Njeru (Miscellaneous Application E030 of 2022)  
[2022] KEHC 12059 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS APPLICATION E030 OF 2022  
EM MURIITHI, J  
AUGUST 17, 2022**

**BETWEEN**

**RAJESHKUMAR NATVERLAL GANDHI ..... APPLICANT**

**AND**

**MARTIN MUTWIRI NJERU ..... RESPONDENT**

**RULING**

1. By a notice of motion dated June 10, 2022, the applicant principally seeks that “pending hearing and determination of the intended appeal, this honourable court be pleased to issue order for stay of execution of the ruling/orders issued on 23/3/2022 and 6/6/2022 by Hon John M Njoroge (C.M) ordering that the applicant pay Ksh 3,000,000 within the next 30 days and thereafter instalment of Ksh 200,000 until payment in full in default whereof execution do issue.”
2. The court notes that the judgment in CMCCC No 266 of 2016 delivered on 23/5/2018 for the payment of Kshs 5,579,140.50 was unsuccessfully appealed from in Meru HCCCA No 65 OF 2018 by Judgment of 3/12/2019.
3. Stay of the said Judgment in CMCCC 266 of 2016 as regards to plaintiff and defendant in that case could only be stayed now upon an order of the High Court pending of Appeal to the Court of Appeal or by the Court of Appeal itself, in terms of order 42 Rule 6 (1) of the Civil Procedure Rules.
4. The court has executed the order in CMCCC 136 of 2020 where the trial court made an order staying execution of the decree in CMCC 266 of 2016 pending hearing and determination of the former suit, by an order of 16/9/2020.
5. Although the judgment/decreed in CMCCC 266 of 2016 was delivered by the same court (Hon Abuya) as the order in 136 of 202, the court could not purport to injunct the execution of the judgment which had already been appealed and affirmed by the High court on 3/12/2019, nine months before the order of stay.



6. Moreover, as pointed out by the respondent's counsel in the replying affidavit of 16/6/2022, the suit CMCCC No 136 of 2020 in which the court purported to stay its judgment in the earlier suit, was between the applicant and the insurer, and the successful plaintiff, the Respondent herein, was not a party. He cannot be bound by an order in a suit in which he was not a party. Should the court have earnestly sought to stay execution of its judgment, it would have been made the order for stay in the mother suit CMCCC 266 of 2016. In that event, however, the trial court would have been confronted with fact that the decision had been affirmed by the appellate court and it had no jurisdiction in the matter, being functus officio in the circumstances.
7. In the applicant's application before this court, the applicant is guilty of material non-disclosure of the fact firstly of the decision by the High Court of this appeal in Meru HCCA 65 of 2018 and secondly of the application in the trial court CMCCC for leave to "settle the judgment/degree delivered on May 23, 2018, by instalment". HCCA 65 of 2018 and the applicant in CMCCC No 136 of 2020 of 10/2/2022 are process taken at by the applicant herein and he cannot feign ignorance in not disclosing these facts that applicant has disentitled himself to any discretion the court may have in the matter. See *R v The General Commissioner for the District of Kensington for purposes of Income Tax Ex-parte Princess Edmond de Polignac* (1917) 1 KB 486.
8. In addition, as pointed by counsel for the respondent, the applicant made no mention of the purported order of the court in CMCCC 136 of 2020 at the time, when he made the application for payment of the decretal sum by instalment. His prayer to pay and settle the Judgment/Decree by instalment indicated that he accepted that the money was due and payable.
9. The court does not deal with the technical issue as to whether the counsel appearing for the applicant is properly on record having been appointed after the delivery of the judgments in both the first instance CMCC No 266 of 2016 and the appeal therefrom in Meru HCCC 65 of 2018, without leave of court by consent of the parties or formal application.
10. On the merits, this application before the court dated 10/6/2022 is without foundation relying as it does on the lower court order to stop execution of judgment/decree appeal wherefrom has already been dismissed by the High Court and for non-disclosure of material facts of the appeal and its subsequent application to pay and settle the decretal sum by instalments, which the trial court granted.
11. The applicant is wholly un-deserving of the discretion of this court for the concealment of the material facts. An untruthful applicant cannot attract the favourable discretion of the court.
12. The attempt in the applicant's 'Supplementary Affidavit' of 24/6/2022 to reopen the Civil Suit by suggesting that the alleged injuries for which the respondent was awarded damages in the trial and by CMCCC 266 of 2016 were the product of a conspiracy to defraud is to be frowned upon. If there was any evidence of such fraud, this application for stay of execution on the ground of a purported stay is a lower court suit between the applicant and his insurance is not the forum. There are no criminal charges against any party in these proceedings, and this court cannot act on conjecture. The applicant had all the forum and facility to defend the suit and raise of issues of fraud in the alleged injuries of the respondent. There is now a judgment of the trial court, confirmed on appeal and for which the applicant has sought on order to liquidate by instalments. The question floated by counsel for the applicant whether the accident subject of the trial happened is not before this court!
13. The applicant cuts in the mind of the court the image of an unsuccessful party who seeks to avoid paying due award of damages to the successful plaintiff at all costs. However, the course of litigation must come to an end, and in this case it has come to such end there having been no appeal for the



decision of the High Court affirming the trial court, the costs of whose proceedings were taxed way back on 2/3/2020 and the Decree became ripe for execution.

**Orders**

14. Accordingly, for the reasons set out above the applicant's application for stay of execution dated 10/6/22 is dismissed with costs to the Respondent.

**DATED AND DELIVERED THIS 17<sup>TH</sup> DAY OF AUGUST, 2022.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

M/s Maitai Rimita & Co. Advocates for the Applicant.

M/s Carlpeters Mbaabu & Co Advocate for the Respondent.

