



Mungania v Centenary Sacco Society Ltd & another (Miscellaneous Civil Application 16B of 2020) [2022] KEHC 13158 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION 16B OF 2020
TW CHERERE, J
SEPTEMBER 22, 2022**

BETWEEN

SAMSON MURUNGI MUNGANIA APPLICANT

AND

CENTENARY SACCO SOCIETY LTD 1ST RESPONDENT

SAMUEL MUGENDI T/A CLEAR REAL AUCTIONEERS 2ND RESPONDENT

RULING

1. By a judgment dated 17th January, 2019, the Co-operative Tribunal in Nairobi Cooperative Tribunal Case No. 104 Of 2017 entered judgment in favour of the 1st Respondent as against the Applicant.
2. By a notice of motion dated 22nd February, 2020, Applicant sought extension of time to file appeal out of time. Leave was granted by an order dated 03rd March, 2020. By another order dated 17th September, 2021, the time to file the appeal was extended by 30 days.
3. By notice of motion dated 29th September, 2021, Applicant seeks unconditional leave to appeal. Applicant has filed an invoice for KES. 1550/- which he paid on 14th September, 2021 for purposes of filing a memorandum of appeal as evidence that he is desirous of prosecuting his appeal
4. The application is opposed on the basis of a relying affidavit sworn on behalf of 1st Respondent its Chief Executive Officer Benson Muthomi who faults Applicant for not complying with court orders relating to filing of the appeal.
5. I have considered the application in the light of the affidavits on record and submissions filed by the Applicant.
6. Applicant seeks unconditional leave to appeal. As clearly stated herein above, leave was initially granted on 03rd March, 2020 and was extended on 17th September, 2021. All that the Applicant needed to do was to file the appeal as directed by the court. If for any reason, he did not file the appeal, he cannot



again seek leave the same having been granted. Having found that the issue of leave has already been determined, this court declines the invitation to allow the Applicant to improperly relitigate, re-agitate and re-canvass a matter that has already been determined.

7. Having come to the conclusion that the issue of leave has already been litigated, it is not permissible to the Applicant to file a similar application by simply conjuring up issues with a view to giving the present application a different complexion from the previous applications.
8. From the foregoing analysis, I find that the notice of motion dated 29th September, has no merit and it is disallowed with costs to the 1st Respondent.

DATED IN MERU THIS 22ND DAY OF SEPTEMBER 2022

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For the Applicant - Present in person

For the Respondent - Ms. Gachohi for G.M.Wanjohi & Co. Advocates

