



**Narmada Builders v Mutua (Civil Appeal 378 of 2017)  
[2022] KEHC 14608 (KLR) (Civ) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14608 (KLR)

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

**CIVIL**

**CIVIL APPEAL 378 OF 2017**

**JN MULWA, J**

**OCTOBER 27, 2022**

**BETWEEN**

**NARMADA BUILDERS ..... APPELLANT**

**AND**

**JUSTUS MUTUNGI MUTUA ..... RESPONDENT**

**RULING**

1. Judgment on the appeal herein was delivered on 8<sup>th</sup> October 2021 in favour of the Appellant/Applicant. In the said judgment, this court (Sergon J.) set aside an interlocutory judgment that was entered against the Appellant in CMCC No. 6043 of 2014 – Justus Mutungi Mutua v Narmada Builders and reinstated the suit. The Appellant has now approached the court vide a Notice of Motion dated 22<sup>nd</sup> June 2022 brought under Section 3A, 1A, 1B of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules* 2010. The Appellant seeks the following orders:
  1. That the amount of Kshs. 92,937= deposited in a joint interest earning account (AC No. xxxx at Equity Bank (Kenya) Limited in the names of both advocates on record being security for the appeal pursuant to lower court order issued on 21<sup>st</sup> March, 2018 by Hon. K. I. Orange be released to Britam General Insurance Co. (Kenya) Limited through a cheque made in their favour together with the accrued interest.
  2. That this Honourable Court be pleased to order the refund of Kshs 92,937/= by the Respondent to Britam General Insurance Co. (Kenya) Limited being half the decretal amounts released to the Respondent pursuant to the lower court order issued on 21<sup>st</sup> March, 2018 by Hon. K. I. Orange herein be refunded before this matter is set down for hearing.
  3. That costs be in the cause.



2. The application is supported by the Affidavit of Mungai G. Nyoike, the Appellant's Advocate.
3. The application is unopposed as the Respondent did not file anything in that regard.
4. A brief history of the matter is that in a ruling delivered on 21<sup>st</sup> March 2018, Hon. K. I. Orenge granted the Appellant a stay of execution of orders issued in the lower court on 14<sup>th</sup> July 2017 pending the hearing and determination of the appeal. However, this was on condition that the Appellant deposits half of the decretal sum in court and pays the balance to the Respondent and there is proof that the Appellant duly complied with the said orders. It is now contended that the Respondent's advocate has refused and/or neglected to sign a consent authorizing the release of the money held as security in the joint names of counsel for the parties herein. The Appellant also contends that the Respondent has failed to refund the amount that was paid out to him.
5. As the Appellant obtained a favourable judgment on appeal, it is entitled to get back all the money paid out as security pending appeal. There is therefore no reason to deny the Applicant the orders sought.
6. In the premises, I allow the Appellant's application in the following terms:
  - i. The sum of Kshs. 92,937= deposited in a joint interest earning account No. xxxx at Equity Bank (Kenya) Limited in the names of G. N. Mugo & Co. Advocates and Mwaura Kamau & Company Advocates, be released to the law firm of G. N. Mugo & Co. Advocates, counsel for the Appellant, within 14 days of this ruling, for onward transmission to their client.
  - ii. The sum of Kshs 92,937/= paid to the Respondent pursuant to the order of Hon. K. I. Orenge of 21<sup>st</sup> March, 2018 be forwarded to the law firm of G. N. Mugo & Co. Advocates, counsel for the Appellant, within 14days of this ruling, for onward transmission to their client.
  - iii. There shall be no orders as to the costs of this application.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER 2022.**

**J. N. MULWA**  
**JUDGE.**

