



**Momanyi v Misoga (Environment and Land Appeal E073 of 2022)  
[2023] KEELC 18942 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18942 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E073 OF 2022**

**AA OMOLLO, J  
JULY 20, 2023**

**BETWEEN**

**EVANS MOMANYI ..... APPLICANT**

**AND**

**JAMES MISOGA ..... RESPONDENT**

**RULING**

1. For determination is the notice of motion dated June 16, 2023 brought under the provisions of Sections 1A, 1B, 3A of [Civil Procedure Act](#) and Order 51 of the [Civil Procedure Rules](#). The Appellant sought for orders;
  - i. That this Honourable Court is pleased to issue an order for the discharge and/or release of the deposited sum of Kenya Shillings One Hundred and Forty Two Thousand Three Hundred and Forty Four (Kshs 142,344/=) to the Applicant/Appellant the sum which was deposited in compliance with the direction and/or orders of the August 29, 2022 by this Honourable Court.
  - ii. That costs of this application be provided for.
2. The application is premised on grounds inter alia;
  - a. On the August 29, 2022, the Honourable Court directed the Appellant to deposit the sum of Kenya Shillings One Hundred and Forty Two Thousand Three Hundred and Forty Four (Kshs 142,344) only to Court's Bank Account to secure the payment of litigation costs (while the case was ongoing) and to protect the Respondent.
  - b. That on the March 16, 2023, when the judgment was delivered an accidental slip and/or omission occurred whereby an application for the release and/or discharge of the deposited



sum of Kshs 142,344/= for costs while the case was ongoing was not made and the eventual orders of the court therefore failed to acknowledge the said sum of money.

- c. That in the said judgment by this Honourable Court on the March 16, 2023, the Applicant/Appellant was granted leave to respond and/or defend himself in the MILIMANI MCRTC NO 53 OF 2010 (*James Misoga vs Evans Momanyi*), to which the Appellant has so far fully complied with all the directions of the court.
3. The Respondent opposed the application by filing a replying affidavit dated July 5, 2023. He deposed that the application is an abuse of the court process. He avers that the deposited amount cannot be discharged because there is no appeal against the order for deposit. He deposed the application should be dismissed as it lacks merit.
4. The order of this court issued on August 29, 2022 read thus;  

“That until then a temporary stay of execution is granted to the applicant on condition that the applicant deposit in court a sum of Kshs 142,344/= within 14 days from the date hereof in default of which the stay shall stand discharged without any further reference to the court.”
5. The order on deposit was on account of the temporary Order of stay of execution. The stay of execution was pending the hearing and determination of the appeal. This appeal was determined vide a judgment of this court delivered on March 16, 2023. Once the court rendered itself, it became functus officio and there would be no basis to continue holding the money that was deposited as security.
6. Consequently, I find merit in the application and allow it as prayed except the applicant shall bear the costs of this application

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JULY, 2023**

**A. OMOLLO**

**JUDGE**

**In the Presence of**

Nyakeriga advocate for Applicant

James Misoga Respondent in person

