



REPUBLIC OF KENYA



Systemedia Technologies Limited v Matheka & 3 others (Environment and Land Appeal 21 of 2022) [2023] KEELC 22042 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22042 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 21 OF 2022
EK WABWOTO, J
NOVEMBER 30, 2023**

BETWEEN

SYSTEMEDIA TECHNOLOGIES LIMITED APPELLANT

AND

GRACE MATHEKA 1ST RESPONDENT

UPSTATE AUCTIONEERS 2ND RESPONDENT

MORAN AUCTIONEERS 3RD RESPONDENT

GREAT RIFT VALLEY AUCTIONEERS 4TH RESPONDENT

RULING

1. This ruling is in respect to two application, the Appellant's Notice of Motion application dated 4th July 2023 and the 1st Respondent's Notice of Motion application dated 5th July 2023. The Appellant's application dated 4th July centered on prayers for review of the court's orders issued in 29th June 2023 and a further order seeking for release of funds deposited as security to the Appellant.
2. The 1st Respondent's application dated 5th July was supported by an affidavit sworn by Grace Matheka the 1st Respondent herein in which the applicant sought similar orders for release of the Kshs 1,000,000/- to the 1st Respondent as part of the accrued rent arrears.
3. Pursuant to the directions issued by this court on 6th July 2023, the court directed both applications to be heard together and the same to be canvassed by way of written submissions. Both parties duly complied with the court's direction and filed their respective written submissions for consideration by this court.
4. I have considered the applications, the response to the same and the submissions filed by the respective counsel for the parties. The main issue which arises for determination is whether the applications dated



4th and 5th of July 2023 are merited? Notably, the key issue is rooted in determining how security for costs is to be released following the determination of the appeal.

5. With regards to release of security for costs, the general principle is that security offers the other party a safety net or cushion as soft landing should the Court rule in their favour. According to the evidence placed before this Court, it is evident that there were rent arrears which had accrued that necessitated the court to direct the Appellant to deposit a sum of Ksh 1,000,000/- as rent arrears pending the hearing and determination of the appeal. Subsequently thereafter the appeal was dismissed with an order that each party bear its own costs.
6. In the case of *Arun C. Sharma v Ashana Raikundalia t/a Rairundalia & Co. Advocates & 2 Others* [2014] eKLR the court stated:-

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.....Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 Rule 6 of the *Civil Procedure Rules* acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”
7. It is not the duty of the Court to deny a successful litigant the fruits of his/her Judgment neither increase the hurdles towards dispensation of justice.
8. This court has also perused the orders issued by Lady Justice Kamau on 18th June 2018 which orders were couched in the following terms;
 - i. That an order of stay of execution of the Ruling and Orders of Hon. I. Orenge issued on 2nd March 2018 as against the Appellant in Nairobi CMCC No. 4210 of 2015 consolidated with Nairobi CMCC No. 4457 of 2017 be and is hereby issued pending the hearing and determination of this Appeal.
 - ii. That (1) hereinabove be on condition that the Appellants deposit a sum of Ksh One Million 1,000,000/- being part of accrued rent arrears in the court by the 11th July 2018 failing which the say of execution will automatically lapse and the Respondents shall be at liberty to execute.”
9. The aforementioned orders were specific to the extent that the sum of Ksh 1,000,000/- that was deposited in court by the Appellant was to be part of the accrued rent arrears. There said orders are binding to this court. Further there was no evidence adduced by the Appellant as to whether the said orders had been varied, reviewed or set aside.
10. Consequently, this Court makes the following orders in respect to the Appellant’s application dated 4th July 2023 and the 1st Respondent’s application dated 5th July 2023;
 - a. The Appellant’s application dated 4th July 2023 is unmerited and the same is hereby dismissed in its entirety.
 - b. The 1st Respondent’s application dated 5th July 2023 is merited and the sum of Kenya Shillings 1,000,000 deposited in court by the Appellant shall be released to the 1st Respondent herein.
 - c. Each party to bear own costs of the applications.

It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF
NOVEMBER 2023**

E. K. WABWOTO

JUDGE

In the presence of:

Mr. Atonga for the Appellant.

Ms. Morara for the Respondents.

Court Assistant; Caroline Nafuna.

