

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 26 OF 2011

ALICE GATHIGIA KARUKUAPPLICANT

VERSUS

MAISHA FLOOR MILLSRESPONDENT

RULING

The subject matter of this ruling is the summons dated 29th July, 2011 in which **Alice Gathigia Karuku**, the Applicant herein, sought for the following orders:

1. **That this application be certified as urgent and be heard on priority basis.**
2. **That this honourable court do review and substitute the order made on the 6th June, 2011, with an order that the applicant do sign a personal bond undertaking to pay the decretal amount to the plaintiff/respondent, pending hearing and determination of this application inter parties and afterwards pending hearing and determination of the pending appeal.**
3. **That there be any other orders as this honourable court deems fit to grant, in the best interest of justice.**
4. **That cost of this suit be catered for.**

The summons is supported by the affidavit of the Applicant. **Maisha Floor Mills**, the Respondent herein, resisted the summons by filing the replying affidavit of Charles Karweru.

It is the submission of **Mr. Ombongi**, that the Applicant is financially unable to deposit the decretal sum of Kshs. 1,411,457/= as ordered on 13th July, 2011. She argued that due to her ill health, she has had to spend a considerable amount of money on treatment. She also stated that her source of income i.e a Petrol station and residential homes along Nyeri-King'ong'o Road were demolished by the relevant authorities on allegations that the same stood on a road reserved. When it turned out that the demolitions were unlawful, the local authorities promised to compensate the Applicant. The Applicant made an undertaking to deposit the decretal sum thinking she would have been paid compensation for her demolished property but she was wrong. She was prompted to make the current application when she realized there may be delay in being paid.

The Respondent was of the view that the application is vexatious. It is also argued that the Applicant is not truthful because the information she has now presented to court was within her knowledge hence it cannot be used to assist her.

I have considered the rival submissions. What is clear in my mind is that the Applicant has come to court to seek the protection of this court from going to ruin. She has basically stated the reasons why she cannot fulfil the promise she made in form of a court order which was recorded by consent. She had been given an order for stay of execution on condition that she deposits the decretal sum in court. I am with **Mr. Karweru**, learned counsel for the Respondent when he asserts that the application appears absurd because it is not clear whether the same can be treated as an application for review. I think I will look at the wider picture in this matter instead of legal technicalities. I have already stated that the Applicant is saying she is unable to raise the decretal sum within the specified time because she has no reliable source of income and that the anticipated compensation is likely to take long to be paid to her.

I am convinced, I should grant her the order. Consequently, I set aside the order requiring the Applicant to deposit a sum of Kshs. 1,411,457/= and substitute it with an order requiring her to deposit in court any other form of security to include but not limited to a title deed or a bank guarantee or log book etc. Costs of the summons to abide the outcome of the appeal.

Dated, signed and delivered this 23rd day of August, 2013

J.K. SERGON

JUDGE

In open court in the presence of Mr. Ombongi for Appellant

Kingori holding brief for Karweru for Respondent