



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Githu v Kenya Com Rabbit Consortium Ltd (Environment and Land Appeal
50 of 2022) [2022] KEELC 15514 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15514 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 50 OF 2022**

JG KEMEI, J

DECEMBER 19, 2022

BETWEEN

ELIZABETH WANJIKU GITHU APPELLANT

AND

KENYA COM RABBIT CONSORTIUM LTD RESPONDENT

RULING

1. Dissatisfied with the Trial Court's Judgment delivered on May 26, 2022 in Kiambu CMCC ELC Case No. 32 of 2019 against her, the Appellant/Applicant filed the instant Motion seeking in the main stay of execution of the said Judgment pending the hearing and determination of her appeal herein. The Applicant further craves for an order staying the accrual of interest pending the hearing of the Appeal and costs of the Application.
2. The Application is premised on the grounds thereat which are echoed in the Supporting Affidavit of even date of Elizabeth Wanjiku Githu, the Applicant. She deponed that the impugned Judgment required her to pay the Respondent a sum of Kshs. 3,970,000/= together with interests at commercial rates from the date of Judgment as well as costs of the suit. That aggrieved with the said orders, she filed her Memorandum of Appeal and requested for copies of typed proceedings and Judgment for purposes of appeal. That her contention lies with the trial Court's finding that she received the Kshs. 3,970,000/- that she is obliged to pay with interests which monies she avers she never received while at the same time the Respondent continues to hold the Applicant's Title deed. To that end, the Applicant is apprehensive that the Respondent may proceed to execute the Judgment in its favor hence the Application.
3. The Respondent through its General Manager, Kariuki Runyenjes Robinson opposed the Application and swore a Replying Affidavit on 19/7/2022. He avowed that the Application is made in bad faith and meant to deny the Respondent the right to enjoy the fruits of Judgment entered in its favor. That indeed the Applicant received the sum of Kshs. 3,970,000/- but only concedes receiving



Kshs.2,470,000/= and should the Court be inclined to allow the Application, the same should be subject to the Applicant paying the admitted sum and the balance of Kshs. 1.5M together with interest which should be deposited in a joint account. Without prejudice to the foregoing, the Respondent maintained that the Application is unmerited and the same ought to be dismissed with costs.

4. The Applicant filed a further Affidavit sworn on 1/8/2022 annexing copies of the impugned Judgment, request for typed proceedings and draft Memorandum of Appeal as EWG1, EWG2 & EWG3 respectively.
5. On 28/7/2022 parties elected to canvass the Application by way of written submissions. At the time of writing this Ruling, only the Applicant through the firm of Rachier & Omollo LLP Advocates had filed submissions dated October 19, 2022.
6. The Applicant outlined the factual background of the matter and drew four issues for determination to wit; whether the appeal will be rendered nugatory if no stay is granted; whether substantial loss may result if stay is not granted, whether the Application was timeously filed and whether the Applicant has offered any security for the due performance of the decree. The Applicant recited the provisions of Order 42 Rule 6(2) Civil Procedure Rules on Application for stay of execution and submitted on the issues as drawn.
7. The main issue for determination is whether the Application is merited.
8. Before delving into the merits of the Application, it is imperative to address the competency of the instant Motion. It is filed pursuant to the provisions of Order 42 Rule 6, Order 51 Rule 1 Civil Procedure Rules and Sections 1A, 1B, and 3A of the Civil Procedure Act and filed by the firm of Rachier & Omollo LLP Advocates on behalf of the Applicant. The said firm filed a Notice of Change of Advocates dated 9/6/2022 and filed on even date. The notice is to the effect that the firm of Rachier & Omollo LLP Advocates was appointed to act for the Applicant in the appeal in place of the firm of T.T Nganga & Associates.
9. There is no evidence before this Court to show that the provisions of Order 9 Rule 9 Civil Procedure Rules have been complied with. Order 9 Rule 9 Civil Procedure Rules provides;

“9. Change to be effected by order of Court or consent of parties
When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

 - (a) upon an Application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
10. The Applicant’s alternate recourse was to proceed under Order 10 Rule 9 Civil Procedure Rules which states that an Application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person is determined first.



11. This Court has previously pronounced itself on this subject in the case of *Stephen Mwangi Kimote – Vs- Murata Sacco Society* [2018] eKLR that;
 - “ 12. Article 50 (2)(b) of *the Constitution* protects the rights of an accused person to choose and be represented by an Advocate. Order 9 does not impede the right of a party to be represented by an Advocate of his choice. It only provides rules to impose orderliness in civil proceedings. Any change of Advocate should comply with the rules. Chaos would reign if parties can change Advocates at will without notifying the Court and the other parties...”
12. That position has been affirmed by the Court of Appeal case of *Symposia Consult Limited Vs George Gikere Kaburu & 2 Others* [2019] eKLR where the Court dismissed an application seeking extension of time to file a notice of appeal out of time that was filed by Advocates who were improperly before the Court.
13. The upshot of the foregoing is that the Application is inappropriately before this Court and the same is struck out with costs to the Respondent.
14. Orders accordingly.

DELIVERED, DATED AND SIGNED AT THIKA THIS 19TH DAY OF DECEMBER, 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Appellant - Absent

Mr. Osodo for the Respondent

Court Assistant – Phyllis / Kevin

