



REPUBLIC OF KENYA



KENYA LAW
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**Gathuri & another v Mohamed & another (Environment & Land Case
239 of 2018) [2025] KEELC 1178 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1178 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 239 OF 2018**

YM ANGIMA, J

MARCH 6, 2025

BETWEEN

PETER THUO GATHURI 1ST PLAINTIFF

NELLY NGONYO KAMAU 2ND PLAINTIFF

AND

MWANAISHA KIRIALE MOHAMED 1ST DEFENDANT

MOHAMED HAMISI MBARAK 2ND DEFENDANT

RULING

1. By a notice of motion dated 08.12.23 filed pursuant to Sections 1A, 1B, 3A and 63 of the [Civil Procedure Act](#) (Cap 21), the defendants sought, inter alia, the following orders;
 - a. Spent
 - b. That Guaranty Trust Bank (Kenya) Limited is hereby compelled to release the amount of Kshs.449,096.050 together with the accrued interest that was deposited at its Guaranty Trust Bank (Kenya) Limited – Moi Avenue, Mombasa, Branch vide Fixed Deposit Account No.215xxxxxx-x-xxxx-x in the joint names of Jengo Associates and Wameyo Onyango & Associates Advocates as security by the appellants herein pending the hearing and determination of the application for stay of execution to the firm of Jengo Associates forthwith vide their client account being Guaranty Trust Bank (Kenya) Limited, Jengo Associates-Client Account Number 215xxxxxx, Mombasa Branch.
 - c. Costs of the application.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by McMillan E. Jengo on 08.12.2023. It was contended that the said sum of Kshs. 449,096.050 was deposited in a joint account in the names of the parties' advocates as a condition



for an interim stay pending the inter partes hearing of the plaintiffs' application dated 22.06.2023 for stay pending appeal.

3. It was the defendants' case that the said application for stay pending appeal was heard inter partes and dismissed with costs vide a ruling dated 28.11.2023. It was thus the defendants' case that the amount deposited in the joint account should be released to them as the successful litigants.
4. The plaintiffs filed grounds of opposition dated 20.09.2024 in opposition to the said application. It was contended that the plaintiffs were still waiting for certified copies of proceedings to enable them pursue the intended appeal to the Court of Appeal. It was further contended that if the bank deposit was released to the defendants there was no guarantee that the plaintiffs shall recover the money in the event of their intended appeal being successful.
5. The said application was canvassed through written submissions. The record shows that the defendants' advocates filed submissions dated 08.12.2024 in support of the application whereas the plaintiffs' advocates filed submissions dated 30.09.2024 in opposition thereto.
6. The singular question for determination in the matter is whether the defendants are entitled to the orders sought. The material on record shows that on 12.07.2023 the advocates for the parties recorded a consent for an interim stay of execution to be granted on condition that the plaintiffs deposited the sum of Kshs. 449,096.050 in a joint interest earning account in the names of both advocates within 7 days.
7. The material on record shows that on 28.11.2023 the court (Hon. Justice N. A. Matheka) delivered a ruling dismissing the plaintiffs' application for stay pending appeal for lack of merit. It is thus evident that the purpose for which the deposit was made pending the hearing of the application for stay pending appeal no longer obtains. In the absence of an order for stay of execution from the Court of Appeal, the court finds no lawful and reasonable explanation for keeping the defendants out of their money.
8. For the foregoing reasons, the court is satisfied that the defendants are entitled to the orders sought in the application dated 08.12.2023. As a consequence, the court makes the following orders for disposal thereof;
 - a. That Guaranty Trust Bank (Kenya) Limited is hereby compelled to release the amount of Kshs.449,096.050 together with the accrued interest that was deposited at its Guaranty Trust Bank (Kenya) Limited – Moi Avenue, Mombasa, Branch vide Fixed Deposit Account No.215-xxxxxx-x-xxxx-x in the joint names of Jengo Associates and Wameyo Onyango & Associates Advocates as security by the appellants herein pending the hearing and determination of the application for stay of execution to the firm of Jengo Associates forthwith vide their client account being Guaranty Trust Bank (Kenya) Limited, Jengo Associates-Client Account Number 215xxxxxxx, Mombasa Branch.
 - b. The defendants are hereby awarded costs of the application.

It is so ordered.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS PLATFORM THIS 6TH DAY OF MARCH, 2025.

In the presence of:

Mr. Wameyo for the plaintiffs

Mr. Jengo for the defendants



Court assistant Kalekye

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Y. M. ANGIMA

JUDGE

