Ogada v Kamau & another (Environment & Land Case 531 of 2011)
[2023] KEELC 20547 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20547 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 531 OF 2011

OA ANGOTE, J

OCTOBER 5, 2023

BETWEEN

PAUL OGANGA OGADA ..... PLAINTIFF

AND

PHILLIP M GRISHON KAMAU ..... 1ST DEFENDANT

GEOFFREY KIIRU MACHARIA ..... 2ND DEFENDANT

RULING

1. Before the court are two applications for determination. The first is the Notice of Motion application dated 8th April, 2022 where the Plaintiff seeks the following orders:

    a. That the stay order issued in this case on 28th August, 2019 and affirmed 1st October 2019 and extended on 19th September, 2019 be set aside and the Plaintiff be at liberty to execute the judgment as ordered.

    b. That the amount of KShs. 3,000,000/- deposited in court on 1st October, 2019 vide Court Receipt No. 0209814 be released to M/S Namada and Co. Advocates for the Plaintiff through their Client Account No. 1001******** Consolidated Bank, Koinange Street Branch.

    c. The Defendants do bear the costs of this motion.

2. The application is based on the grounds on the face of the application and the Affidavit sworn on the same day by Paul Oganga Ogada, the Plaintiff, in support thereof. The Plaintiff deposed that judgment was entered in his favour, but before he could proceed with execution thereof, the Defendants, who had filed a Notice of Appeal, obtained a conditional stay of execution pending appeal where they were to deposit the amount of KShs. 3,000,000 as security and they complied.

3. It was deponed that since then, the Defendants have done nothing to pursue their intended appeal and that after the 60-day window for appeal lapsed, the judgment of the court stands and that no certificate of delay can issue to remedy the delay in this case.

4. It is the Plaintiff's case that his advocates applied for and collected typed proceedings, but they were advised that the Defendants had not collected the proceedings from the time they were certified on 2nd July, 2021; that the stay orders are therefore not sustainable and must of necessity be vacated; that the KShs. 3,000,000 deposited in court as security ought to be released and the Plaintiff be allowed to execute for the rest of the claim.

5. In response to the application, the Defendants filed a Replying Affidavit sworn on 1st February, 2023 by PMG Junior, the legal representative of the 1st Defendant's Estate, who stated that this case only came to his family's attention when the same was served upon his mother on 27th January, 2023.

6. It was deponed that their Advocates perused the court file and discovered that his late father was represented by J Harrison Kinyanjui until recently and also found out about the conditional stay of execution granted on 28th August, 2019 and that he inquired from his late father's erstwhile Advocate why the intended appeal was not pursued and was informed that the Advocate understandably could not get instructions from his father or any of his representatives as his father died in April, 2021.

7. According to PMG Junior, he deponed that he is the only one in his family in a position to keep tabs on the affairs of his late father's estate; that he was unaware of this case and had he known about it, he would have ensured that the intended appeal was actually filed and prosecuted; that the property in question is their family home and allowing this application would render them homeless and thus immense prejudice would be occasioned to them.

8. It was deponed on behalf of the Defendants that payment of the security as directed by court shows their willingness to prosecute the appeal; that the delay is not inordinate or deliberate but occasioned by the death of one of the Defendants and the fact that the legal representative was not aware of this matter and that the application was speculative and they had no intention of interfering with the Plaintiff's operations or possession of the property.

9. PMG Junior swore another Replying Affidavit on 14th June, 2023 reiterating the contents of the earlier Affidavit, and adding that despite the application to cease from acting, the Plaintiff's Advocates continued to effect service through the firm of J Harrison Kinyanjui and that the documents served on the deceased's 1st Defendant's wife in January, 2023 was the first time documents in this matter that had been served directly on his family

10. It was deponed that contrary to the Plaintiff's allegations, the firm of J. Harrison Kinyanjui did apply for typed proceedings vide the letter dated 28th February, 2019 and another of 1st March, 2019; and that typed proceedings now being ready, the 1st Defendant is ready and willing to prosecute the appeal which he believes raises triable issued with high chances of success.

11. The 2nd Defendant's Replying Affidavit sworn on 1st February, 2023 confirms that judgment in the matter was delivered on 21st February, 2019 and that they instructed their advocate to lodge an appeal; that they obtained a stay of execution on condition that they pay security which they complied with; that the Advocate informed him that he had applied for typed proceedings but this would take time and that after a while, no further updates were forthcoming.

12. The 2nd Defendant deposed that he later managed to get in touch with the said Advocate, but he was informed that the Advocate no longer acted for him in this case; that he only became aware of this application after he was served personally, ten months after it was served on Mr. Kinyanui, thus

exposing him to the risk of execution without being heard and that he seeks the court's indulgence to allow him ventilate his appeal.

13. The second Notice of Motion application dated 1st February, 2023 is filed by the 1st Defendant's legal representative and seeks the following orders:

    a. Spent.

    b. That the Firm of Ikua and Partners Advocate be allowed to come on record for the Defendants.

    c. That the 1st Defendant, Phillip M. Grishon Kamau be substituted with PMG Junior.

    d. That the costs of the Application be in the cause.

14. This application is supported by the grounds on the face of the record and the Supporting Affidavit of PMG Junior stating that the 1st Defendant died in April, 2021 and that there is therefore need for his name to be substituted with that of his personal representative to prosecute the matter on behalf of the estate; that the Defendants' erstwhile Advocate is no longer willing to act for them and that it is in the interests of justice that the firm of Ikua and Partners be allowed to come on record for the Defendants as judgement has already been delivered.

15. The Plaintiff's Advocate, Namada Simoni, on 4th March, 2023 swore an Affidavit in response. He reiterated the contents in the Plaintiff's Supporting Affidavit of 8th April, 2022 and further deposed that judgement in this suit was entered in the Plaintiff's favour on 21st February, 2019.

16. The Plaintiff's counsel submitted that the Defendants were represented by Counsel in the period between filing of the Notice of Appeal and the death of the 1st Defendant and have never blamed him for not implementing their instructions; that the 2nd Defendant was present but indolent in pursuing the appeal and that he failed to show up or take any effort to ensure that the appeal was filed.

17. According to the Plaintiff's counsel, any differences between the Defendants and their Advocate were personal issues and ought not vitiate the court process or jeopardise the Plaintiff; that he filed the application of 8th April, 2022 due to the Defendants' inaction in pursuing their appeal and that the Defendants have not shown proof of any attempts made to apply for and obtain proceedings or following up on the same.

18. The Plaintiff's Advocate deposed that it is in the interest of justice that the orders for stay be vacated, the Plaintiff allowed to execute and the security be released to his law firm.

Submissions

19. The Plaintiff's counsel submitted that the cause of the Defendants' inaction is because they have no appeal but want to enjoy the stay of execution indefinitely; that Rule 82(1) of the Court of Appeal Rules gives a 60-day window for instituting the appeal after filing the Notice of Appeal; that the period has lapsed and that the delay is inexcusable and cannot be remedied.

20. The court was urged to be guided by the decision in *Krishen Dev Handa v Fatuma Mohamed* (1986) eKLR where the Court found that a party who failed to institute and prosecute its appeal over years had no interest in pursuing the case, and the court vacated the orders of stay and struck out the Notice of Appeal.

21. It was submitted that the 2nd Defendant, despite being aware and giving instructions to his Advocates to file the appeal, was indolent in pursuing it; that the 2nd Defendant, despite being present all along, has not shown any efforts taken to pursue the Appeal and the allegation that he had applied for proceedings are unsubstantiated.

22. The Plaintiff's Advocate relied on *Kiiru M'Mugambi & 39 Others v Moses Kirima Meenye & Kirima Advocates & 3 others* (2020) eKLR where the court held that a litigant ought to be vigilant in prosecuting his matter without delay, and that courts should be reluctant to give audience to non-committed litigants and that litigation must come to an end.

23. The Defendants' counsel submitted that the Plaintiff's application was essentially seeking a review of the Court's orders issued on 28th August, 2019 and affirmed on 1st October, 2019; that the prerequisite for review of orders are set out under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules* as either a mistake or an error on the face of the record and that the Plaintiff had not met these conditions.

24. The Defendant's Advocate submitted that the allegations that they did not apply for typed proceedings is false; that they did in fact apply for the said proceedings vide their letter dated 12th June, 2019 barely a week after delivery of judgment and that in determining whether there has been an inordinate delay in filing the appeal, the court ought to look at the conduct of the Parties as was held in *Cecilia Wanja Waweru v Jackson Wainaina Muturi & Another* (2014) eKLR.

25. It was submitted by the Defendants' counsel that the delay in filing the appeal was occasioned by unfortunate occurrences and not by the Defendants' indolence, hence it was not inordinate.

26. Counsel submitted that while exercising its discretion, the court ought to consider which party would suffer prejudice if the application was allowed; that the purpose of stay pending appeal is to preserve the subject matter, protect the rights of the party pursuing appeal and to avoid rendering the appeal nugatory (*RWW v EKW* (2019) eKLR).

27. It was submitted that should the Defendants be allowed to prosecute their intended appeal, the Plaintiff is shielded/protected by the security for cost deposited in court, whereas should the stay order be vacated, the Defendants would be completely exposed as the suit properties are their primary places of residence and that they will be rendered homeless.

28. In conclusion, the Defendants' Counsel relied on the words of Tunoi JA in of *Sampson Nderitu Karitu v Martha Watetu & Joseph Ndumia Kariru* C.A. No. 168 of 2004 where the learned Judge stated that land disputes should wherever possible be determined by the Court of Appeal and no party desiring to so be heard should be turned away from the seat of justice.

Analysis and Determination

29. Having considered the application, the responses and submissions filed by both counsel in this matter as well as the authorities annexed thereto, the issues arising for determination are:

    i. Whether the firm of Ikua and Partners should be allowed to come on record for the Defendants and the deceased, Phillip Kamau Njuguna, be substituted with PMG Junior?

    ii. Whether the Plaintiff is entitled to the orders sought in the application dated 8th April, 2022?

30. A brief background of this matter is that judgment was delivered on 21st February, 2019 in favour of the Plaintiff. The court's determination was as follows:-

    a. A declaration is hereby given that the defendants are trespassers to the Plaintiff's land known as LR No. 13804 (I.R. 50811) Karen plains Nairobi.

    b. An order that the defendants do cease the trespass and stop any further developments or construction on LR No. 13804 (I.R. 50811) Karen plains Nairobi.

    c. The defendants are granted 60 days within which to vacate from the suit property failing which the Plaintiff to start eviction process including demolition of structures without further recourse to court at the defendants' cost.

    d. The OCS Karen Plains police station to supervise the eviction of the defendants if they will not voluntarily vacate within 60 days.

    e. An order of injunction is hereby given restraining the defendants or their agents from ever interfering with LR No. 13804 (I.R. 50811) Karen plains Nairobi after they vacate voluntarily or upon eviction.

    f. The defendants to pay the plaintiff general damages of KShs. 3,000,000/-.

    g. The defendants' counter claim is dismissed with costs to the Plaintiff.

    h. The defendants shall pay costs of the main suit to the Plaintiff.

31. The Defendants, not satisfied with the decision of the court, on 8th March, 2019 filed a Notice of Appeal dated 28th February, 2019 and served it as required. Thereafter, they applied for a stay of execution of the judgment pending their intended appeal vide an application dated 28th August, 2019.

32. The court allowed the application for stay of execution on the same day. However, the stay of execution was conditional on the Defendants depositing into court KShs. 3,000,000 as security for costs. The order was affirmed on 1st October, 2019 and the Defendants complied and deposited the said amount.

33. The Defendants applied for a copy of typed proceedings. The Deputy Registrar informed the parties vide a letter dated 2nd June, 2020 that the typed proceedings were ready for collection and that they would be certified upon payment of the requisite fee. The Plaintiff managed to apply and obtained a copy of the proceedings. The Defendants however failed to pick a copy of the typed proceedings and further failed to institute the appeal within the prescribed timelines.

34. This has led to the current application by the Plaintiff, who now seeks orders from court to vacate the order for stay of execution. It is at this point that the firm of J. Harrison Kinyanjui, which had been on record for the Defendants, applied to be allowed to cease from acting for them, claiming that they had no instructions to act as they had lost touch with their clients.

35. I will first deal with the issue of whether the firm of Ikua and Partners should be allowed to come on record for the Defendants and the deceased Phillip Kamau Njuguna be substituted with PMG Junior. Order 9 Rule 9 of the *Civil Procedure Rules*, 2010 provides that:

> "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."

36. In *S.K. Tarwadi v Veronica Muehlemann* [2019] eKLR, the court explained the purpose of the provision above in the following words:-

> "
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> "18. In my view, the essence of Order 9 Rule 9 *CPR* is to protect advocates from mischievous clients who will wait until a judgement has ben delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away. Indeed Order 9 does not foresee how Rule 9 can be sidestepped hence the enactment of Rule 10 as follows:
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> "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 shall be determined first."

37. The court has noted that the parties did not submit on this application. Suffice it to say that the firm of J. Harrison Kinyanjui was on record for both Defendants from the time of filing a defence to the point that judgment was delivered in this suit. It is this firm that filed the Notice of Appeal on behalf of the Defendants and wrote to court applying for typed proceedings.

38. When the Plaintiff filed his application dated 8th April, 2022, the said firm filed the Notice of Motion application dated 3rd October, 2019 to be allowed to cease from acting for the Defendants on the ground that he had lost touch with his clients and had no instructions to proceed in the matter. The application was allowed, and consequently, the court ordered that documents be served on the Defendants personally.

39. A perusal of the pleadings reveal that the Defendants' application dated 1st February, 2023 was not opposed. At paragraph 17(iv) of the Plaintiff's Advocates Replying Affidavit, he clearly states: "We have no difficulty with the application for substitution per se". Bearing in mind the fact that the firm of J. Harrison Kinyanjui is no longer on record in this matter, having obtained leave to cease from acting, it is only fair that the Defendants are allowed to obtain counsel to represent them in this matter.

40. Further, since the application for substitution of the 1st Defendant is also unopposed, the ends of justice can only be met if the Defendants' application to substitute the decease, Phillip Kamau Njuguna, with PMG Junior is allowed.

41. On the second issue, this court agrees with the Defendant's submissions that the Plaintiff's application is in essence asking the court to sit in review of its orders issued on 28th August, 2019 and affirmed on

1st October, 2019. The power of the court to review its orders emanates from Section 80 of the *Civil Procedure Act* which provides as follows:

> " Any person who considers himself aggrieved-
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> (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
>
> (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

42. Order 45 of the *Civil Procedure Rules* on the other hand sets out the conditions to be met in an application for review. The rules lay down the jurisdiction and scope of review and in essence restricts the grounds for review. Order 45 Rule 1 provides as follows:

> "
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> " 1. Application for review of decree or order [Order 45, rule 1.]
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> (1) Any person considering himself aggrieved—
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
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> (b) by a decree or order from which no appeal is hereby allowed,
>
> and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
>
> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review."

43. The Plaintiff has not claimed any mistake or error on the face of the record, and neither has there been discovery of new and important matter or evidence. Review, however, can also be allowed on "any other sufficient reason." Indeed, under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision.

44. In *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR, the Court of Appeal held as follows:

> " Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limps therein stated or "for any sufficient reason."...As repeatedly pointed out in various decisions of this Court, the words, "for any sufficient reason" must be viewed in the context firstly of Section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly

on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order."

45. Guidance is further found in *Shanzu Investments Limited v Commissioner for Lands* (1993) eKLR (Civil Appeal No 100 of 1993) the Court of Appeal affirmed its earlier decision in *Wangechi Kimita & Another v Mutahi Wakabiru* CA No 80 of 1985 (unreported) where it was held that:-

> "Any other sufficient reason need not be analogous with the other grounds set out in the rule because such a restriction would be a clog on the unfettered right given to the court by Section 80 for the *Civil Procedure Act*. The court further went on to hold that the other grounds set out in the rule did not in themselves form a genus or class of things with which the third general head could be said to be analogous. The current position would, then, appear to be that the court has unfettered discretion to review its own decrees or orders for any sufficient reason."

46. In *Sylvester Nthenge v Johstone Kiamba Kiswili* [2021] eKLR for instance, where the Applicants failed to comply with given timelines set by the court with regards to depositing of security for costs, the court, relying on the ground of sufficient reason, found that the reasons advanced by the Appellant were sufficient to vary the orders issued by the court and in fact proceeded to vary the order of stay of execution as sought.

47. In the instant suit, the Defendants filed a Notice of Appeal within the required timelines. They then applied for and obtained a stay of execution pending appeal. The court granted the stay on the understanding that the Defendants intended to institute an appeal. That appeal was however not instituted within statutory timelines. Rule 82 (1) of the now Repealed *Court of Appeal Rules*, 2010, which were in operation at the time the Notice of Appeal was filed, provides that:-

> "
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> "(1) (1) Subject to rule 115, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged:-
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> (a) a memorandum of appeal, in quadruplicate;
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> (b) the record of appeal, in quadruplicate;
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> (c) the prescribed fee; and
>
> (d) security for the costs of the appeal:
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> Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy."

48. Some of the reasons given for failure to comply with timelines is that the Defendants lost touch with their erstwhile advocate because the 1st Defendant died in 2021 and the 2nd Defendant fell sick. A perusal of the annexures filed by the 1st Defendants' reveals that the 2nd Defendant fell sick in 2016. As at the time of delivery of judgment, he was already unwell, and nothing stopped him from issuing instructions for the filing of the Notice of Appeal.

49. That being the case, there is no justification as to why he could not continue with the prosecution of the intended appeal, especially in light of the assertion that the suit property comprises his primary residence. This reason does not therefore justify the indolence on his part to pursue the appeal considering that he was aware of the matter all along.

50. The court has seen the Certificate of Death annexed to PMG Junior's Replying Affidavit and confirms that the 1st Defendant died on 11th April, 2021. While this court cannot confirm the accuracy of the allegation that the 1st Defendant's personal representative was not aware of the suit herein, it was upon PMG Junior, the personal representative of the estate of the 1st Defendant, to move with haste and resolve whatever issues bedevilled the estate (See *In Re Estate of Joseph Maingi Muriithi (Deceased)* [2021] eKLR).

51. The Special Grant in favour of PMG Junior was issued on 15th November, 2021. That being so, it is unbelievable that he was unable for more than a year to unearth the fact that he was on the brink of being evicted from the place he calls home, a further testament to the unwarranted delay in this matter.

52. It should be pointed out that the original 1st Defendant was still alive at the time the proceedings were ready for collection on 2nd June, 2020, and had he kept up-to-date with this matter, he could as well have issued instructions on the conduct of the appeal, or at the very least follow up to ensure it was filed.

53. As to the argument that the failure to institute the Appeal was due to the inadvertence or mistake of the previous advocate, this is not a sufficient excuse for failure. The Defendants cannot hide behind the failure of their advocate to institute the appeal or take the required actions. Not when the Defendants themselves have not demonstrated that they took tangible steps to follow up on this matter.

54. The 2nd Defendant has averred that his calls to the Advocate went unanswered. However, nothing stopped him from visiting the Advocates office in person to inquire about the status of his appeal if the advocate was being evasive. His argument that the mistakes of his advocate should not be visited on them therefore, cannot hold.

55. As stated earlier, the order of stay of execution pending appeal was issued on the premise that the Defendants intended to institute an appeal. the Defendants failed to institute the intended appeal within the set timeline of sixty days from the date of filing the Notice of Appeal.

56. Rule 83 of the *Court of Appeal Rules*, 2010 set out the effect of failure to institute an appeal within the given timeline thus:-

> " 83. If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time he shall be deemed to have withdrawn his notice of appeal and the court may on its own motion or on application by any party make such order. The party in default shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served."

57. In *Mae Properties Limited v Joseph Kibe & Another* [2017] eKLR, the Court of Appeal explained the deeming provision under Rule 83, as follows;

> "In the case of failure to lodge an appeal within 60 days after filing of the notice of appeal, Rule 83, which is invoked by the applicant herein, provides thus;
>
> '83. If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time he shall be deemed to have withdrawn his notice of appeal and the court may on its own motion or on application by any party make such order. The party in default

shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.'

We think that the true meaning and import of the rule is more often than not scarcely appreciated. The rule as framed prescribes the legal consequence for non-institution of an appeal within the 60 days appointed by the Rules of Court. Moreover, the said consequence is couched in mandatory, peremptory terms: the offending party shall be deemed to have withdrawn the appeal. It seems to us that the deeming sets in the moment the appointed time lapses."

58. The proviso to Rule 82 is to the effect that "in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy."

59. Since the Deputy Registrar informed the parties that the typed proceedings were ready for collection on 2nd June, 2020, even if the sixty days were to be computed from that date, the time for filing the appeal would lapse on 2nd August, 2020 or thereabout.

60. Going by the provision of Rule 83 of the Court of Appeal Rules and the case of *Mae Properties Limited v Joseph Kibe & another* cited above, the Notice of Appeal was automatically deemed withdrawn on the date the time for instituting the appeal lapsed. One would have expected that simultaneous with the filing of the responses herein or soon thereafter, the Plaintiff would have moved to the Court of Appeal to seek leave to file the Appeal out of time.

61. However, despite having enough time to do so, this court has seen no evidence of such an application as proof of their willingness to pursue the appeal. As things stand, there is no appeal upon which the orders of stay of execution could stand on.

62. While appreciating the fact that the Defendants will indeed suffer substantial loss if evicted from their homes, the court must also consider that the judgment has remained in abeyance for over four years now, with no action from the Defendants to try and save their homes through the intended appeal.

63. The bottom line is that the Defendants, from their conduct, did not attach any importance to the appeal. The upshot is that the Plaintiffs application ought to be allowed in its entirety.

64. For the reasons set out above, the court makes the following orders:

i. The firm of Ikua and Partners Advocates be and are hereby granted leave to come on record for the Defendants.

ii. The 1st Defendant, Phillip M. Grishon Kamau, be and is hereby substituted with PMG Junior.

iii. The order of stay of execution issued in this case on 28th August, 2019, and affirmed on 1st October 2019 be and is hereby set aside.

iv. The amount of KShs. 3,000,000 deposited in court on 1st October, 2019 vide Court Receipt No. 0209814 be released to M/S Namada and Co. Advocates for the Plaintiff through their Client Account No. 1001******** Consolidated Bank, Koinange Street Branch.

v. The Defendants to bear the costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF OCTOBER, 2023.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ikua for Defendants

Ms Mamo for Namada for Plaintiff

Court Assistant - Tracy