



REPUBLIC OF KENYA



KENYA LAW
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**Bahati Properties v Attorney General & 7 others (Environment & Land
Case 31 of 2015) [2022] KEELC 14753 (KLR) (2 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14753 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 31 OF 2015
SM KIBUNJA, J
NOVEMBER 2, 2022**

BETWEEN

BAHATI PROPERTIES PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

SAID M MABAVU 2ND DEFENDANT

ANNA W DEREVA 3RD DEFENDANT

ABDALLA MWACHIBULO HEMA 4TH DEFENDANT

FATUMA S NCHIZUMO 5TH DEFENDANT

OMAR MASHAKA 6TH DEFENDANT

MAHFUDH MOHAMED MWAMTUKU 7TH DEFENDANT

RAMA MATANO MWAURINDA 8TH DEFENDANT

RULING

1. The defendants filed the notice of motion under certificate of urgency dated the August 5, 2022, seeking for the following;
 - a. Spent.
 - b. That this court be pleased to issue an order for reimbursement of the sum of Kshs 1.5 million deposited as security to Umair Muhammad.
 - c. That costs be in the cause.



The application is supported by the affidavit sworn by Umair Muhammad on August 5, 2022, in which she among others deposed that the defendants had been ordered to deposit Kshs 1.5 million by the court on October 30, 2019, as a condition for stay of execution, pending the appeal they intended to lodge. That she made the deposit to the court account through a transfer from her bank account on the defendants' behalf on the November 26, 2019, and receipt number 0045418 was issued in the name of the defendants' advocates. That the defendants subsequently lodged an appeal to the Court of Appeal, and a stay of order was issued. That the deponent has distanced herself from the matter since its conclusion and now seeks for the money deposited to be released back through her bank account at Absa Bank.

2. Mrs Kirui, the learned counsel for the defendants appeared before the court on the October 17, 2022 and made her submissions, in support of the application.
3. The court has carefully considered the application, perused the record and come to the following conclusions;
 - a. That indeed, from the affidavit evidence tendered by the defendants and the record, the court delivered its judgement on the June 27, 2019 in favour of the plaintiff in terms of prayers (a) to (k) of the plaint, with a further order that each party bears their costs. That in the subsequent ruling of October 30, 2019, the defendants were granted stay on condition that they deposit Kshs 1.5 million in 30 days.
 - b. That the appeal was indeed filed in the Court of Appeal, being Civil Appeal number 141 of 2019. The copy of the Court of Appeal judgement in the record delivered on the June 4, 2021 confirms that the defendants' appeal was dismissed with costs.
 - c. That in view of the finding in (b) above that the appeal has been determined, then the court finds no reasonable cause to continue retaining the security deposited pursuant to the order of the October 30, 2019. That however, the deposit should be released to the depositor, the counsel on record for the defendants, in whose name the deposit receipt was issued for onward transmission to the owner.
 - d. That in respect of the prayer for costs of this application, it is clear there is no other party who has participated in its hearing, and it is only fair the defendants, who are the applicants, do meet their own costs.
4. That flowing from the foregoing, the court orders as follows;
 - a. That the money deposited pursuant to the court order of October 30, 2019, being Kshs 1,500,000.00, under receipt number 0045418 of November 26, 2019 be released to the depositor, MS J O Magolo & Company Advocates, for onward transmission to the owner.
 - b. The defendants to bear their costs in the application.
 - c. The file be closed.

It is so ordered.

DATED AND VIRTUALLY DELIVERED THIS 2ND DAY OF NOVEMBER 2022.

S M Kibunja, J

ELC MOMBASA.

IN THE PRESENCE OF;



PLAINTIFF

DEFENDANTS

COUNSEL

WILSON.....COURT ASSISTANT.

S M Kibunja, J

ELC MOMBASA.

