



**Angaya & another v Muli & another (Suing as the Administrators and Legal Representatives of the Estate of Brian Mwanza Muli (Deceased)) (Civil Case E878 of 2022) [2025] KEHC 1034 (KLR) (Civ) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1034 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E878 OF 2022**

**JN MULWA, J**

**FEBRUARY 20, 2025**

**BETWEEN**

**SEHM ATULO ANGAYA ..... 1<sup>ST</sup> APPELLANT**

**ISACK ASHIVARA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**KAIWA MULI ..... 1<sup>ST</sup> RESPONDENT**

**RUTH MBULA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS AND LEGAL REPRESENTATIVES OF  
THE ESTATE OF BRIAN MWANZA MULI (DECEASED)**

**RULING**

1. By a motion dated 20/03/2024 the appellants who are the applicants sought orders of stay of execution of the judgment and decree of the trial court delivered on 30/09/2022 in Milimani CMCC No. 1058 of 2020 pending hearing and determination of the appeal that was marked as settled on 29/02/2024 and application dated 6/03/2024 seeking reinstatement of the appeal.
2. The application dated 6/03/2024 filed by the applicants was listed for hearing on 20/03/2024 but the applicants failed to attend court to prosecute the same resulting in the same being dismissed for non-attendance by the applicants. It is this application dated 6/03/2024 that the applicant seeks orders to reinstate for hearing.
3. It is supported by an affidavit sworn by the applicant's advocate Lawrence Njuguna on 20/03/2024 and grounds found on its face. The advocate deposition is that on the material date he was in several virtual courts and was aware of the motion under review listed as No. 6 but confused it with No. 26



which he admits to have been an error/mistake on his part by not appearing in the court due to the confusion.

The applicants therefore urge the court to allow the motion stating that denial would cause prejudice that may not be compensated by costs.

4. The motion is opposed by a replying affidavit sworn on 2/05/2024 by Kaiva Muli one of the Respondents. It is his deposition that on 16/11/2023, the court granted the applicants a conditional stay of execution pending hearing and determination of the appeal but which the applicant has failed to comply with and therefore the court ought not grant the orders sought.
5. The rival parties submissions have been considered. It is evident that the applicants have failed to comply with court orders issued on 16/11/2023, which were conditional to grant of stay orders pending the hearing of the appeal.
6. There being no stay orders in place, the respondents are at liberty to execute for recovery the balance of the decretal sum.
7. The applicants moved to court by motion dated 6/03/2024 seeking yet other stay orders after lapse of the earlier orders granted on 16/11/2023.
8. On the scheduled hearing date, the applicant's advocates failed to attend court to prosecute the motion. The court notes that this motion is similar to the earlier determined motion. Filing of multiple and similar motions is but an abuse of court process. Further, on 29/02/2024 the court upon perusal of the court proceedings and noting that the orders of 16/11/2023 had not been complied with, together with the failure to file the Record of Appeal within the timelines granted by the court and in absence of the parties the court exercised its discretion dismissed the appeal.
9. In view of the above and while the applicant never lodged an appeal against all the orders delivered by the court including orders of 29/02/2024, the appeal stands dismissed.
10. The applicant's motion dated 20/03/2024 based on non-existent appeal cannot stand because it is a further abuse of the court process.
11. For the foregoing, the court finds no merit at all in the motion dated 20/03/2024. It is dismissed with costs.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025**

.....

**JANET MULWA.**

**JUDGE**

