



In re Rafiki Pharmaceuticals Limited v Omoke & another (Miscellaneous Application E339 of 2024) [2025] KEHC 2049 (KLR) (Commercial and Tax) (10 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E339 OF 2024**

JWW MONG'ARE, J

FEBRUARY 10, 2025

IN THE MATTER OF RAFIKI PHARMACEUTICALS LIMITED

BETWEEN

IN THE MATTER OF RAFIKI PHARMACEUTICALS LIMITED ... APPLICANT

AND

NELLY KEMUMA OMOKE 1ST RESPONDENT

VIEWLINE AUCTIONEERS 2ND RESPONDENT

RULING

1. What is before this court is an application dated 23rd May 2024 and it seeks the following orders:-
 1. Spent
 2. That this Honourable Court be pleased to substitute a security deposit of Kshs.500,000/= with a motor vehicle logbook pending the hearing pending the hearing of the Application filed on 17-4-2024.
 3. That the Court be pleased to extend the date of deposit of the substituted security by one(1) month.
 4. That costs of this application be in the suit.
2. This application is premised on the ground's set out on its face. The Application is opposed and the Respondents have filed a replying affidavit sworn by Nelly Kemuma Omoke, the 1st Respondent on 20th May 2024. The court issued directions that parties were to written submissions but a perusal of the record reveals only the Respondents have their submissions dated 28th May 2024 which I have carefully considered.



3. The Applicant argue that the Plaintiff is a small business a capitalization of Kshs.1,000,000/= and therefore cannot afford to deposit the cash security of Kshs.500,000/=. They urge the court to allow them to instead place a security in the form of a motor vehicle logbook registered and cautioned with National Transport Authority and undertake not to sell the same pending the hearing and determination of their intended appeal.
4. The Respondents oppose the application and argue that there is no justification offered for the application to substitute the security. They argue that a motor vehicle logbook is not a fit and proper security as a motor vehicle is subject to depreciation over time and since the same will be in use, may be destroyed in an accident and end up being valueless and therefore greatly prejudice the Defendants.
5. I have carefully considered the application as filed by the parties before me and the response thereto and the written submissions by the Defendants. I note that the Appeal from which the Applicant wishes to challenge the decision of the lower court is yet to be filed and that there is no memorandum or a draft thereof from which the court may evaluate if the Appeal has a likelihood of success. Order 42 Rule 7 of the Civil Procedure envisions a scenario where an application such as the one before the court is made when there is an appeal already filed or an intended appeal by filing of a Notice of Appeal or a draft Memorandum of Appeal therein. The said section of the law provides as follows:-
 7. Security in case of order for execution of decree appealed from [Order 42, rule 7]
 - (1) Where an order is made for the execution of a decree from which an appeal is pending, the court which passed the decree or the court to which an appeal is pending in terms of rule 6 shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the court from whose decree or order such appeal shall have been brought.
 - (2) Where an order has been made for the sale of immovable property in execution of a decree and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the court which made the order, or to any court to which such appeal or second appeal.
6. I note from a perusal of the record that there is no appeal pending before this court from which a grant of the orders is sought. I also note that a similar application was filed and dismissed by the trial court which had issued the judgment upon which the intended appeal is sought to emanate. The Jurisdiction of the High court on an appeal or an application thereto can only be invoked once there is an appeal on record. The present application is therefore not anchored on any appeal and therefore deprives this court of the requisite jurisdiction to make any orders.
7. It is not lost to the court that 'Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.' (See Nyarangi JA., in The Owners of Motor vessel Lillian 'S' v Caltex Kenya Limited [1989] KECA 48 (KLR)).
8. In sum and in the absence of an appeal having been filed before this court to trigger the requisite jurisdiction of this court, the court has no alternative but down its tools in this matter. The Notice of Motion filed on 23rd May 2024 is dismissed for want of jurisdiction. Each party is directed to meet its own costs. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 10TH DAY OF
FEBRUARY 2025**

J.W.W. MONGARE

JUDGE

In the presence of:-

N/A for the Applicants.

N/A for the Respondent.

Amos - Court Assistant

