



Megapower for Energy Solutions and Contracting Limited v Kamau & another (Civil Appeal E1290 of 2024) [2025] KEHC 853 (KLR) (Civ) (4 February 2025) (Ruling)

Neutral citation: [2025] KEHC 853 (KLR)

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

CIVIL

CIVIL APPEAL E1290 OF 2024

AC MRIMA, J

FEBRUARY 4, 2025

BETWEEN

MEGAPOWER FOR ENERGY SOLUTIONS AND CONTRACTING LIMITED APPLICANT

AND

AGNES NJERI KAMAU 1ST RESPONDENT

GRACE WANJA KIMOTHO 2ND RESPONDENT

RULING

1. This ruling relates to the Appellant/Applicant’s application by way of a Notice of Motion dated 8th November 2024. The application sought to stay the execution of the decree in Nairobi Small Claims Court Comm No. E6224 of 2024 between the parties wherein the Applicant was adjudged to pay the Respondents the sum of Kshs. 612,500/= plus costs and interest. That was vide the judgment rendered on 18th October 2024.
2. Aggrieved by the decision, the Appellant preferred an appeal and contemporaneously filed the instant application. It also filed written submissions in further support to the application. A List of Authorities containing several decisions was also filed. The Applicant decreed that it had satisfied all the attendant conditions precedent to the grant of the orders sought and urged this Court allow the application.
3. The application was viciously opposed by the Respondents through a Replying Affidavit sworn by Agnes Njeri Kamau, the 1st Respondent herein. They also filed a List of Authorities wherein several decisions were referred to. They urged this Court to dismiss the application as none of the conditions played out in the Applicant’s favour.



4. This Court has carefully considered the application, the response, the written submissions and the decisions referred to. There is no doubt both parties have well-articulated the legal provisions and the attendant conditions under which the instant application is premised on. Going by the circumstances under which the cause of action arose, it is apparent that the Applicant stands to suffer substantial loss if the order is not granted. The application was also been filed timeously.
5. The main contention was on the issue of security. Unlike the Respondents, the Applicant deposed that it was amenable to provide any security as ordered by the Court. It, however, stated that it was willing to file a Bank Guarantee in its written submissions. On their part, the Respondents deposed that the decretal amount be deposited in a joint account in the names of the parties' Advocates.
6. The proposal to file a Bank Guarantee given by the Applicant was not part of the Applicant's Affidavit. The Applicant did not file any supplementary disposition even after the Respondents put their offer on the table. The offer was only made in the submissions. This Court cannot, therefore, vouch the Applicant's seriousness on the issue. Therefore, the offer to file a Bank Guarantee is for rejection.
7. Consequently, this Court hereby makes the following final orders in a bid to further balance the parties' interests herein: -
 - a. The execution of the judgment and the decree in Nairobi Small Claims Court Comm No. E6224 of 2024 is hereby stayed subject to the Applicant depositing the sum of Kshs. 300,000/= [Three Hundred Thousand Only] in Court within 14 days of this order.
 - b. In case of default in [a] above, the order of stay of execution of the decree will stand automatically discharged and the Notice of Motion dated 8th November 2024 dismissed with costs assessed at Kshs. 10,000/= [Ten Thousand Only] and the Respondents shall be at liberty to forthwith levy execution.
 - c. In the event of compliance with [a] above, the Appellant shall file and serve the Record of Appeal together with written submissions notwithstanding the non-availability of certified proceedings, if so, within 14 days of [a] above.
 - d. Once served, the Respondents shall file and serve their written submissions within 14 days of service.
 - e. This matter shall be fixed for highlighting of submissions and/or for any such appropriate orders on a date to issue.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2025.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Muriuki, Counsel for the Applicant/Appellant.

Miss Yalla, Counsel for the Respondents.

Michael – Court Assistant.

