



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kanyanja v Coffee Research Institute; RW Mbanya & S Company Advocates (Interested Party)  
(Civil Appeal 230 of 2008) [2025] KEHC 6114 (KLR) (Appeals) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6114 (KLR)

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

**APPEALS**

**CIVIL APPEAL 230 OF 2008**

**AC MRIMA, J**

**MAY 15, 2025**

**BETWEEN**

**STEPHEN NGARUIYA KANYANJA ..... APPLICANT**

**AND**

**COFFEE RESEARCH INSTITUTE ..... RESPONDENT**

**AND**

**RW MBANYA & S COMPANY ADVOCATES ..... INTERESTED PARTY**

**RULING**

1. The Applicant has moved this Court through an application by way of a Notice of Motion dated 6<sup>th</sup> January 2025 seeking several orders. The application was filed by Messrs. Mutuohoro Gakuru & Company Advocates on behalf of the Applicant. The Applicant was represented by the firm of Messrs. R. W. Mbanya & Co. Advocates since inception of the matter in the magistracy.
2. The application sought the following reliefs: -
  - a. That this court issues an injunction restraining the respondents from, deducting, transferring, borrowing or interfering in any manner whatsoever the decretal sum plus interests pending the determination of their application
  - b. That this court issues an order against the respondent and the interested party to immediately render a true account of the joint bank account from 5<sup>th</sup> November 2015 to date of filing of their application.
  - c. That the court orders the release of the decretal sum plus interest to the Applicant.
  - d. That the Applicant be at liberty to apply for further orders as the court may deem fit



- e. That costs of the Application be provided for.
3. The application was premised on the grounds on its face and was supported by an Affidavit sworn by the Applicant on 6<sup>th</sup> January 2025 wherein the Applicant painstakingly recounted his journey in the Judiciary in search of justice since 2004. He also filed a Further Affidavit dated 26<sup>th</sup> February 2025 in response to objections raised to the application. The Applicant equally filed written submissions dated 3<sup>rd</sup> March 2025 in additional support to his application.
  4. The application was vehemently opposed by the Respondent through a Notice of Preliminary Objection dated 23<sup>rd</sup> January 2025 and a Replying Affidavit sworn by one Patricia A. Ngutu, the Respondent's Corporation Secretary on 23<sup>rd</sup> January 2025. The Respondent mainly raised two issues being that the firm of Messrs. Mutuohoro Gakuru & Company Advocates was improperly on record having taken over the conduct of the matter after judgment without leave of the Court and the pendency of the matter before the Court of Appeal.
  5. The Interested Party filed a Replying Affidavit dated 30<sup>th</sup> January 2025 wherein Learned Counsel recounted how the matter had moved from the magistracy through to the Court of Appeal. Learned Counsel also registered her displeasure over the manner in which the firm of Messrs. Mutuohoro Gakuru & Company Advocates had since handled the matter. In the end, Counsel was not opposed to the matter being taken over by the incoming Advocates and even executed a consent in favour of the incoming firm subject to an undertaking on her legal fees for professional services rendered.
  6. The application was heard by way of written submissions. Whereas the Applicant and the Respondent filed and exchanged their rival submissions, the Interested Party left the matter to Court in view of the consent filed in favour of the incoming Advocates.
  7. The application subject of this ruling is a reminder that justice delayed is justice denied. The Applicant filed Nairobi [Milimani] CMCC No. 13558 of 2004 [hereinafter referred to as 'the suit'] seeking his terminal dues upon retiring from service in 2002 having worked with the Respondent for 33 years. The suit was dismissed. The Applicant filed the current appeal against the dismissal which appeal was allowed allegedly vide two judgments by Hon. M.A. Ang'awa, J [now retired] on 3<sup>rd</sup> July 2012 and Hon. D. A. Onyancha, J [now retired] on 5<sup>th</sup> March 2015. Dissatisfied with the said renditions, and claiming non-participation in the suit, the Respondent filed two applications before the Court of Appeal seeking extension of time to lodge intended appeals. The applications were Nai No. 215 of 2015 and Nai 219 of 2015. As the said applications were pending determination before the Court of Appeal, the Respondent sought for a stay of execution of the decree before this Court which was granted on condition that the entire decretal sum be deposited in an interest earning account in the names of the Counsel for both parties. According to the record, the sums were duly deposited as ordered.
  8. The applications before the Court of Appeal were eventually heard and dismissed in a ruling delivered on 4<sup>th</sup> December 2015 by Hon. Okwengu, JA [now retired]. The Respondent then requested, vide its Counsel's letter dated 4<sup>th</sup> December 2015, for referral of the stay applications to a full bench of the Court for re-hearing. From the correspondences exchanged between the Respondent's Counsel and the Court of Appeal, it appears that the applications are yet to be heard by the full bench.
  9. In the midst of the prevailing *status quo*, the application under consideration was then filed.
  10. As pointed out earlier, two main issues arise in this application for determination. The first issue is the propriety of the firm of Messrs. Mutuohoro Gakuru & Company Advocates on the record. The Respondent, rightly so, raised a red flag on the need for leave on the part of Messrs. Mutuohoro Gakuru & Company Advocates before properly representing the Applicant after judgment. However,



a consent was filed where R. W. Mbanya & Co. Advocates that allowed Messrs. Mutuohoro Gakuru & Company Advocates to appear for the Applicant. Whereas the Respondent, correctly so, objected to the consent arguing that the consent ought to have preceded the filing of the application, this Court finds that the consent cushioned the firm of Messrs. R. W. Mbanya & Co. Advocates from the mischief that led to the introduction of the requirement to obtain leave to change Advocates after judgment. Learned Counsel affirmed as much. As such, the Respondent's objection is hereby unsuccessful.

11. The next issue for consideration is whether the funds deposited in an interest earning account in the names of the Counsel for both parties ought to be released to the Applicant. The Applicant prayed that the funds be released since he is ailing and needs money for medical care. The Respondent opposed the release by contending that the applications on which the stay orders were issued was still pending before the Court of Appeal.
12. There is no doubt that the said applications, Nai No. 215 of 2015 and Nai 219 of 2015, are still pending before the Court of Appeal. This Court so finds since the applications were initially determined under Rule 55[1] of the *Court of Appeal Rules*, 2010 which Rule allowed a party aggrieved by a decision of a single Judge to request, either informally at the delivery of the decision or in writing to the Registrar within 7 days of the decision, for referral to a full bench. The said Rule 55 of the *Court of Appeal Rules* 2010 was subsequently replaced by Rule 57 of the *Court of Appeal Rules*, 2022. In this case, the Respondent requested for the referral on the day the applications were disallowed. Therefore, the stay orders issued by the High Court still subsists.
13. Should this Court, therefore, allow the application? This question is not unique to this matter. Courts have rendered on the issue where two schools of thought have emerged. The first school is that if the Court appealed from ordered a deposit of the funds as security, then the very Court may order a release of funds pending the determination of an appeal on special and exceptional circumstances. That position was reiterated by the Court of Appeal in *Kenya Breweries Limited v. Washington Okeyo* [2002] 1 EA 109 in which it was held that where the interests of justice and the welfare of a party demand urgent attention, the High Court can exercise its discretion to grant a relief, even if the appeal process is ongoing. Further, in *Abdi Ali v. Mohamed Abdi* [2014] eKLR, the Court noted that the overriding principle should always be the promotion of justice and where Applicants face serious and imminent risk to their health, the High Court may exercise its discretion to allow the release of the decretal sum, even if an appeal is pending. The principle of urgency and special circumstances was again emphasized in *Mohammed Ali & Another v. Attorney General* [2015] eKLR, where the High Court noted that in cases of life-threatening illness or other immediate dangers to the well-being of a party, the Court may grant orders that would ordinarily be outside the standard procedure, provided that the Applicant demonstrates compelling reasons.
14. The second school advocates for restraint on the part of the Court appealed from and urges that all attendant matters be dealt with by the appellate Court which is seized of the matter. This principle mirrors the need for judicial comity and avoiding parallel proceedings. In *Nyangito & Co. Advocates v. Trans Mara County Council* [2012] eKLR, the Court of Appeal held that where a matter is pending before an appellate Court, the Court appealed from ought to refrain from entertaining proceedings that touch on the same issues on appeal. The Court emphasized that  

“it would be an abuse of the Court process for a party to seek to re-litigate the same issues in a lower Court while an appeal on the same subject is pending before a higher court.”
15. This Court has keenly considered the objects of the above two schools of thought. Whereas each proposition is based on a certain justification, this Court aligns with the calling for restraint on the part of the Court appealed from. That is so because, once the Court appealed from has fully rendered itself,



then it technically becomes *functus officio* and even if not, the danger of having parallel proceedings and the possibility of issuance of contradicting orders, which no doubt is a corporate embarrassment, must be avoided for the institution of the Judiciary to command public trust and confidence. It is only proper for the Court appealed from to accord the Court appealed to the room and comfort to articulate the issues before it unless the law specifically provides for such parallel proceedings.

16. In this case, since the applications are still pending before the Court of Appeal, then that is the correct forum to which the Applicant ought to seek the release of the funds from, for whatever reasons. As at now, the Applicant has not demonstrated why the orders cannot be sought from the Court of Appeal. Further, with a view of not jeopardizing any chances of the Applicant moving the Court of Appeal in a like application, the application before this Court will instead be struck out.
17. Having sufficiently rendered itself on the instant application, this Court now makes the following final orders: -
  - (a) The Notice of Motion dated 6<sup>th</sup> January 2025 is hereby struck out.
  - (b) Given the history of this matter, each party shall bear its own costs of the application.Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:-

Mr. Gakuru, Learned Counsel for the Applicant.

Mr. Aguel, Learned Counsel for the Respondent.

Miss. Mbanya, Learned Counsel for the Interested Party.

Michael/Amina – Court Assistants.

