



REPUBLIC OF KENYA



**KENYA LAW**  
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**Timau Flour Limited v Timau Flour Limited (Civil Appeal  
11 of 2018) [2025] KEHC 5677 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5677 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CIVIL APPEAL 11 OF 2018  
AK NDUNG’U, J  
MAY 8, 2025**

**BETWEEN**

**TIMAU FLOUR LIMITED ..... APPELLANT**

**AND**

**ELIJAH NDUNGU KAMAU ..... RESPONDENT**

**RULING**

1. Elijah Ndungu Kamau(hereinafter, the Applicant), moved this court vide the Notice of Motion dated 20/02/2025 brought under section 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6, Order 27 Rules 3 and 9, Order 51 Rule 1 of the Civil Procedure Rules for orders that;
  - i. This honourable court be pleased to issue an order directing the release of Kshs.400,000/- together with accrued interest (if any) being the decretal sum deposited into court as a condition for the issue of stay pending appeal to the Applicant through his Advocates on record.
  - ii. The said decretal amount be released and deposited into KCB Bank, Nanyuki Branch in the name of G.M Wanjohi, Mutuma & Co Advocates Account No. 133xxxxxxx.
  - iii. Cost of this application be provided for.
2. The application is based on the grounds on the face thereof and supported by an affidavit sworn by the Applicant.
3. He deposed that he was the Plaintiff in the primary suit, Nanyuki MCCC No 77 of 2013 which was determined in his favour on 03/09/2018 and he was awarded Kshs.400,000/- as general damages and costs of the suit and interests at the courts rates. That the Appellant appealed through this instant appeal and sought stay of execution through an application dated 02/11/2018. By a consent dated 08/11/2018, the application for stay was compromised and the Appellant was required to deposit the



- entire decretal sum into court as a condition for stay and the consent was adopted as an order of the court and the decretal sum was deposited. That the Appellant however deposited the decretal amount through the trial court (sic) despite the fact that the order was made by this court.
4. Consequently, the appeal was struck out on 22/01/2025 after lagging in court for more than 5 years and the Applicant's Advocates wrote to the Appellant's advocates requesting for a consent so that an order for the release of the decretal sum may be made but there was no response. That he has been advised that since the appeal was dismissed, it is proper that he receives the decretal sum and that, since it is this court which made an order for deposit of decretal sum, this court should issue an order for the release. That no party stands to suffer prejudice if this application is allowed.
  5. The application was not opposed by the Respondent who were served with the application as evidenced through the affidavit of service on record.
  6. The application is filed pursuant to Order 27 Rule 3 and 9 of the Civil Procedure Rules. Rule 3 states that;

“If money paid into court is not accepted in accordance with rule 2 (1) the money remaining in court shall not be paid out except by consent or in pursuance of an order of the court, which may be made at any time before, at or after the hearing of the suit; and where such an order is made the money shall not be paid out except in satisfaction of the claim or cause or causes of action in respect of which it was paid in.”
  7. Rule 3 states;

“Money paid into court under an order of the court shall not be paid out except in pursuance of an order of the court:”...
  8. The court in *Gianfranco Manenthi & another v Africa Merchant Assurance Company Ltd* [2019] eKLR observed that;

“Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favor. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal ... This the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals...”
  9. The record shows that parties herein entered into a consent dated 08/11/2018 for the deposit of Kshs.400,000/- to court being the decretal sum which was a condition for grant of the order of stay. The same was adopted as an order of the court on 12/11/2018. As stated by the Applicant, the appeal was struck out by this court for failure by the Appellant to lodge the record of appeal on 22/01/2025.
  10. It therefore means that there is no pending appeal hence the decretal sum should be released to the Applicant.
  11. The application thus has merit and is allowed as prayed and I make the following orders;



- i. That the decretal sum of Kshs.400,000/- deposited in court together with accrued interest, if any, be released to the Applicant.
- ii. That the said decretal sum be deposited into:  
Bank: KCB Bank  
Branch: Nanyuki Branch  
Account Name: G.m Wanjohi, Mutuma & Co Advocates  
Account Number: 133xxxxxxx
- iii. No order as to costs.

**DATED AND SIGNED AND DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**A.K. NDUNG’U**

**JUDGE**

