Wanjiku & another v Wanjiru & another (Civil Appeal E322 of 2024) [2025] KEHC 6359 (KLR) (Civ) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6359 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E322 OF 2024

AC MRIMA, J

MAY 22, 2025

BETWEEN

BRIAN WACHIRA WANJIKU ..... 1ST APPLICANT

MARIO WACHIRA MUNUHE ..... 2ND APPLICANT

AND

MARGARET WANJIRU ..... 1ST RESPONDENT

GERALD IRUNGU ..... 2ND RESPONDENT

RULING

1. The Applicants/Appellants have moved this Court through an application by way of a Notice of Motion dated 24th day of February 2025 seeking inter alia an order staying the execution of the judgment rendered on 22nd February 2024 in Nairobi [Milimani] Chief Magistrates Commercial Court in No. MCCC E9643 of 2021 [hereinafter referred to as 'the suit'] pending the determination of the appeal herein.

2. For clarity, the application sought the following prayers: -

    1. That this application be certified urgent and interim orders be granted in the first instance pending service and hearing of the application.

    2. That there be stay of execution of the Judgment/Decree herein and/or any other subsequent orders of the court pending the hearing and determination of this application.

    3. That this Honourable Court be pleased to allow the Appellants/Applicants to deposit a bank guarantee as security for due performance of the decree herein.

4. That this Honourable Court be pleased to grant any other orders and/or relief befitting the circumstances.

5. That the costs of this Application be provided for.

3. The application was supported by the grounds on the face thereof and the Affidavit in support as well as written submissions. The Respondents vehemently opposed the application through their Learned Counsel's Replying Affidavit and written submissions.

4. This Court has taken the liberty to carefully consider the application alongside the response, the submissions and the decisions referred to therein and finds it unmerited on the following three grounds. First, the application mainly seeks a stay of execution of the judgment in the suit for the second time. Such orders were granted by this Court on 4th June 2024 on condition that the Applicants deposit the sum of Kshs. 2,500,000/= in a joint-interest-earning account in the names of the parties' Counsel within 30 days thereof. However, the instant application does not seek to review or vary the said orders but instead seeks fresh stay orders. To that end, this Court is functus officio in respect to the instant stay application and the application is caught up by the doctrine of *res judicata*.

5. Second, according to the Affidavit in support of the application sworn by one Catherine Kendi, a Legal Officer at the Kenya Orient Insurance Company Limited, the insurer of the Applicants' subject vehicle, it was deposed at paragraph 7 thereof thus '... the company has not been able to raise the said amount.' As such, since a Bank Guarantee is ordinarily issued on the Bank's undertaking that it holds the funds stated therein, then even if an appropriate application for variation of security had been made, still, on the basis of the Company's clear inability to raise the funds, this Court would not have been convinced that any such orders would be complied with. Courts do not act in vain.

6. Third, there has been inordinate and unexplained delay in filing the application. The initial stay orders were issued in June 2024 and the instant application filed in February 2025, a period of 8 months later. No explanation was given on the time taken to file the application.

7. It is the foregoing basis that the application is not sustainable and the following final orders do hereby issue: -

   (a) The Notice of Motion dated 24th day of February 2025 be and is hereby dismissed with costs.

   (b) The Respondents are at liberty to execute the judgment and decree in Nairobi [Milimani] Chief Magistrates Commercial Court in No. MCCC E9643 of 2021 despite the pendency of the appeal herein.

   (c) As the Record of Appeal was filed and the Lower Court file is on record, the Appellants shall file and serve written submissions within 14 days of this order. Once served, the Respondents shall be at liberty to file and serve written submissions within 14 days of service.

   (d) Highlighting of submissions on a date to issue.

   Orders accordingly.

DELIVERED , DATED AND SIGNED AT NAIROBI THIS 22 ND DAY OF MAY, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Miss. Allasi, Learned Counsel for the Respondents.

Mr. Waweru, Learned Counsel holding brief for Rono for Appellants.

Amina – Court Assistants.