



Mountain View General Hardware Ltd & 2 others v Ng'ang'a (Civil Appeal E648 of 2024) [2025] KEHC 8363 (KLR) (Civ) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8363 (KLR)

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

CIVIL

CIVIL APPEAL E648 OF 2024

JN MULWA, J

JUNE 12, 2025

BETWEEN

MOUNTAIN VIEW GENERAL HARDWARE LTD 1ST APPELLANT

GODFREY KASIRI 2ND APPELLANT

ELIZABETH WAMBUI KASIRI 3RD APPELLANT

AND

CATHERINE NJERI NG'ANG'A RESPONDENT

RULING

1. This ruling determines the respondent's Motion dated 14/11/2024 whereof she seeks orders that the court be pleased to release Kshs. 2 million deposited in court as part security on 18/09/2024 through her Advocates Clients Account at KCB Kimathi Street Branch.
2. The Respondent further seeks an order of review of court orders and directions issued her on 7/011/2024 to reflect the specific prayers in her motion dated 29/05/2024 at prayer No. 3, which formed the basis of the application herein.
3. The motion is predicated on Order 45(2) and 51(1) of the Civil Procedure Rules and Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, and supported by an affidavit sworn on an even date by the Applicant Catherine Njeri Ng'ang'a.
4. The orders issued by the court on 7/11/2024 on the Motion dated 29/05/2024 are the subject of review by the instant motion whereof the applicant/respondent argues that the court stopped sale of the subject property twice, but no directions or orders as to costs of stopping the two auctions were granted and thus prays that costs of the two scheduled auctions be granted to her.



5. Further, it is the Respondent's disposition that the court did not give directions on Kshs. 2,000,000/= which was deposited in court by the Appellants on 18/09/2024 as part security for the due performance of the decree and thus seeks that the said sum be released to her advocates via their KCB Client Account for onward transmission to her.
6. Additionally, the Respondent deposes that prayer No. 3 of the Motion dated 29/05/2024 was not considered by the court during hearing of the motion, basically on the instalment payment of the decretal sum as proposed by the Appellants.
7. The Notice of Motion dated 29/05/2024 at prayer No. 3 the appellants sought orders to be allowed to settle the decretal sum of Kshs. 5,431,500/= in quarterly installments of Kshs. 1,500,000/- until payment in full.
8. In opposition to the motion, the Respondents/Appellants filed a Replying Affidavit sworn on 17/02/2025 by Elizabeth Wambui Kasiri deposing that they have no issue with the sum of the Kshs. 2 million deposited in court be released to the Respondent but oppose an award of costs on the appeal arguing that the court when allowing them to settle the debt in instalments made no order on costs, and are committed to settlement of the full decretal sum in compliance with the court orders.
9. The Appellants state that as in compliance with court orders for payment in installments, they have done so, with a balance of Kshs. 964,999.90 at the date of hearing of the motion, and have stated their purport to pay upto completion, and therefore the motion for review of the court orders is unwarranted and an abuse of court process and should be dismissed.
10. The court has taken liberty to peruse the proceedings and court orders of the 7/11/2024. On this date, the Respondent Catherine Njeri Ng'ang'a was not represented by her advocates despite the date having been taken in court in presence of her advocate Mr.Kitenge on 30/09/2024.
11. While seeking for the motion dated 29/05/2024 to be heard afresh, no reasons at all have been provided for failure to attend court by her advocates. Ms. Chepwogen, advocate for the Applicant, argued her motion and confirmed compliance with conditional stay orders, including deposit of the sum of Kshs. 2 million in court as security for due performance of the decree pending hearing and determination of the appeal.
12. Upon arguments being considered, the court allowed the Appellants to settle the balance, then Kshs. 2,430,000/= in six (6) monthly equal installments until payment in full with a default clause that if not paid as stated, the Decree Holder would have the liberty to execute.
Upon the above backdrop, the Respondent's motion dated 14/11/2024 prayer No. 3 of the motion was granted as prayed.
13. On prayer no. 4, the court finds no plausible reason to go back to the motion dated 29/05/2024 and specifically prayer No. 3. The gravamen of the dispute between the parties is and was settlement of the decretal sum by the Appellants. Payment proposals were made and the Respondent was at all material times aware, but in her advocates wisdom, opted not to attend court and when the Appellant's application was heard *ex parte* in her absence and upon consideration the court granted the same in their favour, culminating in the orders issued on 17/11/2024 for payment in instalments of the decretal sum as stated above, which orders have been complied with by the Appellants to date, and balance to be paid as per the said court orders.
14. The court will not review these orders for lack of good and or sufficient reasons to invoke the court's discretion in its favour.



There is a default clause in place. If indeed the Appellants are in default, the Respondent is at liberty to take advantage of the default clause without coming back for further orders. Litigation must come to an end.

15. The Applicant seeks an order for release of the Kshs. 2 Million deposited in court by the Appellants to her. The Appellants are agreeable to the same. The court therefore hereby proceeds to issue an order that the said sum of Kshs. 2 Million deposited as security in court by the Appellants be released to the Respondent through her Advocates on record, P.K. Kitenge & company Advocates for onward transmission to her.
16. On the issue of costs on the Appellant's motion dated 29/5/2024 it is trite that costs ought to follow the event as provided at Section 27 of the *Civil Procedure Act*.

However, the proviso thereto provides that the court shall for good reason otherwise order. The court's decision is discretionary. See Joseph Muchiri Mbugua v. Gatimu Ndirangu [2019]; Stanley Kanuga Nkarichia v. Meru teachers College & Another [2016] eKLR and Esther Buchere Maki v. South Nyanza Sugar Co. Ltd [2018] eKLR.
17. It is true that the motion was opposed and the Respondent's advocates attended court for its hearing four times for mentions and directions, but failed to attend on the 7/11/2024 for the interpartes hearing. The Respondent's advocates expended time and resources for the four times. Though no reasons have been given for the advocates failure to attend court on the 17/11/2024, the court notes that the Appellants motion was for the better part compromised save for the mode of installment payment of the balance of the decretal sum.
18. The court has taken note of the several court attendances by the Respondent by her advocate, Ms. Kitenge, not less than four times. In the case of Universities Academic Staff Union, Egerton Branch/ Chapter & 2 Others v. Universities Academic Staff Union (Interested party) [2024] eKLR, the court held that as the parties conduct during the hearing process was responsibly amicable and parties acted in good faith and finalized the case within reasonable time, the court held the view that as a result, and in exercise of its discretion that each party to bear own costs.
19. In the end, the Appellants were the successful party in the motion dated 29/05/2024, they were allowed to pay the balance of the decretal sum in installments. The court is acutely aware that the intended sale of the Appellants property by public auction was stopped twice by court orders. It is not in dispute that the Auctioneer must have expended money and time in the process and procedure of compliance with instructions to sell the Appellants properties, which the court stopped twice to pave way for the amicable settlement which was a success. These costs are exhibited in the Auctioneers Bill of Costs dated 4/11/2024 to the extent of Kshs. 618,811 (though not yet taxed.)
20. The court is therefore persuaded that the Respondent's arguments on the issue of costs on the Appellants application dated 29/05/2024 need to be revisited by way of a review order under Order 45 Rule 1, on account of any other sufficient reason, being the issue of the two stoppage court orders of sale of the Appellants properties on two occasions at the court's intervention.
21. The court being so persuaded, the Respondent's Motion dated 14/11/2024 succeeds partially, on the matter of costs; to the extent that costs of the motion dated 29/05/2024 shall be borne by the Appellants to the Respondent; such costs to be agreed upon and/or taxed in default of agreement at 50% scale fees.
22. The motion dated 14/11/2024 having succeeded partially, each party shall bear its own costs.



23. On the matter of costs in the appeal which is now spent, in the court's view, parties shall attend court for directions on 30/9/2025.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF JUNE, 2025

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JANET MULWA.

JUDGE

