



**Anchor Maize Millers v Munyutha (Civil Appeal E238 of 2024)  
[2025] KEHC 11156 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E238 OF 2024  
FN MUCHEMI, J  
JULY 24, 2025**

**BETWEEN**

**ANCHOR MAIZE MILLERS ..... APPELLANT**

**AND**

**JOSEPHINE MUNYUTHA ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The application of the respondent dated 13<sup>th</sup> December 2024 seeks for orders to direct the appellant to furnish security equivalent to the decretal amount and the accruing interest issued by the court on 5<sup>th</sup> February 2023 pending the hearing and determination of the appeal.
2. The appellant/respondent opposed the application and filed a Replying Affidavit. However the respondent failed to upload the said affidavit in the CTS afresh or supply the court with a physical copy following the directions of the court on 24<sup>th</sup> June 2025.

**Respondent/Applicant's Case**

3. According to the averments of the applicant, it is deposed that judgment in Ruiru CMCC No.124 of 2022 delivered in her favour against the appellant/respondent herein of Ksh.5721,270 on 23<sup>rd</sup> February 2023 has never been settled to date. The appellant in the lower court filed an application dated 25<sup>th</sup> September 2023 to settle the decree in installments which was granted in the ruling delivered on 15<sup>th</sup> February 2024. The appellant has never complied with the orders. Instead the respondent filed an application dated 25<sup>th</sup> September 2023 and the court issued a ruling on 15<sup>th</sup> February 2024 giving a payment plan failure to which execution would ensue.
4. The applicant states that she has severally attempted to execute against the debt but is always frustrated by the appellant who closes its business premises when auctioneers go to there. The applicant states



- that the respondent lodged an appeal at the instant court over the said break in orders and has sought further anticipatory orders seeking to preclude what can and cannot be attached.
5. The applicant states that the 3<sup>rd</sup> party named in the appeal has not accrued the statutory right of sale over the machine in question and as such it cannot be excluded from proclamation for other private debts independent of what the respondent owes her.
  6. The applicant avers that there has been continuous non compliance of the lower court's orders since judgment was issued. Further there has been delay and disregard of her rights as a litigant and the sum owed is still outstanding with no mention how the respondent intends to settle the amount. The applicant states that she continues to suffer as the respondent continues to file numerous applications delaying execution of the orders and warrants issued by the lower court.
  7. Parties put in written submissions.

### **The Applicant's Submissions**

8. The applicant relies on Order 42 Rule 6 of the *Civil Procedure Rules* and the cases of *Pambazuka Mart [K] Ltd v Javed* [Civil Appeal E018 of 2023] [2024] KEHC 5451 [KLR] and *Gianfranco Manenthi & Another v African Merchant Assurance Co. Ltd* [2019] eKLR and submits the respondent ought to be compelled to deposit the decretal sum and the accruing interest as security to ascertain it is capable of satisfying the award for judgment and to show that the appeal is not a delaying tactic.
9. Relying on the cases of *Brinks Security Services Limited v Nickson Mwangi Elioji* [2021] eKLR and *Ali v Nyang'ao* [Civil Appeal E010 of 2024] [2024] KEHC 8319 [KLR] [11 July 2024] [Ruling], the applicant submits that she will suffer loss if the respondent will not deposit security in court as the respondent has not paid a single cent of the decretal sum and has failed to comply with the court orders issued on 15<sup>th</sup> February 2024 on settlement of the decretal amount.
10. The applicant submits that the respondent has moved the current court to show that if its milling machine is to be auctioned to settle the decree it would suffer irreparable loss. The respondent has admitted that the decree has never been settled for 2 years and it has never complied with the orders issued on 15<sup>th</sup> February 2024. The applicant argues that the respondent is seeking to preclude what can be proclaimed but is not giving the court alternatives as to how it seeks to settle a court order that stands to date and has not been overturned by way of appeal. Consequently, she runs the risk of being left holding a judgment that she cannot execute if the respondent does not furnish the court with security to settle the decree and ensure that she also experiences justice.

### **The Respondent's Submissions**

11. The respondent submits that the machine sought to be deposited as security is the backbone of its business and without it there is nothing that can go on for purposes of clearing debts. The respondent submits that it has proposed to liquidate the amounts in instalments.
12. The respondent relies on Order 42 Rule 6 of the *Civil Procedure Rules* and the cases of *Jayesh Hasimukh Shah v Narim Haira & Another* [2015] eKLR; *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR and *Westmont Holdings SDN BHD v Central Bank of Kenya & 2 Others* [Petition No. 16 [E023] of 2021] and submits that it can make good the debt without depositing any security in court. Furthermore, the respondent argues that an order for security for costs is unreasonable as it impedes access to justice by imposing a condition precedent before one can be heard contrary to Articles 48, 50 and 159 of the *Constitution*. The respondent further submits that auctioning the milling plant will render the appeal nugatory.



13. The respondent argues that it has not admitted to the debt and hence filed an appeal. Further, it has not prejudiced the applicant and neither has the applicant shown any prejudice. The respondent submits that the security sought is not proportionate to the importance and complexity of the subject matter as it is more expensive and has a debenture with Equity Bank thus depositing the same as security is an injustice.

## The Law

### Whether the application has merit.

14. The purpose of security was explained in the case of *Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others* [2014] eKLR the court stated:-

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.....Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 Rule 6 of the *Civil Procedure Rules* acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.

15. Evidently, the issue of security is discretionary and it is upon the court to determine the value and terms. From the lower court record, judgment in Ruiru SPMCC No. E124 of 2022 was entered on 23<sup>rd</sup> February 2023 in favour of the applicant herein for a sum of Kshs. 5,721,270/- plus costs of the suit and interest from the date of the judgment until payment in full. The respondent then filed an application dated 25<sup>th</sup> September 2023 seeking for orders to be allowed to pay the decretal sum of Kshs. 6,091,718/- in installments. On 15<sup>th</sup> February 2024, the magistrate allowed the respondent to liquidate the sum in monthly installments by paying a lumpsum of Kshs. 3 million within 14 days from the ruling and the balance be offset through monthly installments of Kshs. 150,000/- on or before the 10<sup>th</sup> day of every month beginning April 2024 until payment in full and in default of which, execution to issue. The respondent did not comply with the said orders which forced the applicant to move the court through an application dated 8<sup>th</sup> July 2024 seeking for break in orders to allow enforcement of the warrants of attachment. The trial court rendered its ruling on 5<sup>th</sup> September 2024 granting the said break in orders to enforce the warrants of attachment. Being aggrieved with the said ruling, the respondent lodged the instant appeal.
16. It is noted that the appellant herein has not applied for stay of execution pending appeal. As such order 42 Rule 6 which provides for security can only be applied in regard to the respondent's application which seeks for orders that the applicant do deposit security being a milling machine that became a controversial issue before the magistrate's court. The magistrate gave break in orders to the business premises of the appellant herein in the ruling delivered on 5<sup>th</sup> September 2024. This ruling is the subject of this appeal.
17. I make a few observations in this application, Firstly, that the applicant has not applied for stay of execution and as such this court has no business determining issues of stay pending appeal. Secondly, this application by the respondent seeks for orders that the appellant be compelled to deposit his milling machine as security in this appeal so that the decretal sum of Ksh.6,091,718 owing to her can be secured. In my view, this application is misplaced since no stay orders have been applied for by the appellant in this appeal. There are no interim stay orders in this appeal and the applicant/respondent



is at liberty to proceed with execution of the decree in the lower court as this appeal proceeds for preparation to be heard.

18. The respondent/applicant seems to have abandoned the pursuit of her rights in the judgment and is kind of chasing the wind in this appeal. The current application seems to benefit the appellant/respondent in buying time not to settle the decree of the lower court.
19. In conclusion, I find this application misconceived and defective is hereby dismissed with no orders as to costs bearing in mind the prevailing circumstances and history of this case.
20. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

