



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mutie t/a Damar Tours & Safaris v Muasya (Miscellaneous Civil Case
E004 of 2025) [2025] KEHC 11141 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL CASE E004 OF 2025
FN MUCHEMI, J
JULY 24, 2025**

BETWEEN

PETER KAEKA MUTIE T/A DAMAR TOURS & SAFARIS APPLICANT

AND

VERONICA NDUNGE MUASYA RESPONDENT

RULING

Brief facts

1. The application dated 9th January 2025 seeks for orders of leave to file an appeal out of time against the judgment in Thika CMCC No. 670 of 2020 delivered on 8th May 2024. The applicant further seeks for orders of stay of execution in respect of the same judgment as well as stay of warrants of attachment of moveable property and proclamation of attachment dated 9th December 2024 pending the hearing and determination of the appeal.
2. The respondent filed Grounds of Opposition dated 22nd January 2025 in opposition to the application.

Applicant's Case

3. The applicant states that the judgment in Thika CMCC No. 670 of 2020 was delivered on 8th May 2024 whereby the trial court entered judgment in favour of the respondent finding the applicant fully liable and awarding the respondent general damages for pain, suffering and loss of amenities at Kshs. 1,000,000/- and special damages of Kshs. 18,850/- with costs and interest. Being aggrieved with the said decision, the applicant states that he intends to lodge an appeal however the statutory time within which to do so has lapsed.
4. The applicant avers that the delay in lodging the appeal was occasioned by the trial magistrate who after delivery of the judgment retained the file in his chambers for 8 weeks thus obtaining access to the judgment was futile. Furthermore, the 30 days stay of execution granted in the matter has since lapsed



and unless stay of execution is granted, the appeal shall be rendered nugatory and the applicant will suffer irreparable loss and damage.

5. The applicant states that he has a strong appeal which has high chances of success. Further, the value of the decree is a substantial sum of money and if paid to the respondent the applicant is apprehensive that she will not be able to recover the whole sum.
6. The applicant states that if the decretal sum is paid over to the respondent, the said respondent shall not be in a position to refund the same if the appeal is successful. Further, the respondent has not disclosed nor furnished the court with any documentary evidence to prove her financial standing.
7. The applicant is ready and willing to furnish the court with a bank guarantee from DTB Bank Limited as security for the due performance of the decree. The applicant further states that he has brought the present application promptly and without unreasonable delay.

The Respondent's Case

8. The respondent states that the application is frivolous, incompetent and vexatious, bad in law, incurably defective, an abuse of the court process, an afterthought and has been brought after inordinate delay. Judgment in the lower court suit being Thika CMCC No. 670 of 2020 was delivered on 8th May 2024 which is over 8 months ago and this period amounts to inordinate and inexcusable delay.
9. The respondent states that the application is meant to frustrate the process of execution. Further Section 79G of the *Civil Procedure Act* is clear on the timelines for lodging an appeal.
10. The respondent states that in the event the application is allowed, the applicant should be ordered to release to her half the decretal sum plus costs which amounts to Kshs. 593,590/- and deposit the other half in court within 14 days.
11. The respondent avers that she is a business lady and capable of refunding the decretal sum. Further, the respondent states that the applicant has not given any plausible reasons why the orders sought should be granted.
12. This court gave directions to the parties to file submissions but from the record the applicant failed to file his submissions by the time of writing this ruling.

The Respondent's Submissions

13. The respondent relies on Order 42 Rule 6 of the Civil Procedure Rules and submits that the applicant has brought the instant application after an inordinate delay of 8 months. Further, the said delay has not been explained. The respondent argues that the applicant is not keen in filing an appeal as he stated that he filed the present application after the proclamation dated 9th December 2024.
14. The respondent submits that she is a business lady and therefore capable of refunding the decretal sum in the unlikely event the application is allowed.
15. The respondent submits that the application is fatally defective as it does not have a supporting affidavit. The supporting affidavit filed is for a different case being Civil Appeal No. E231 of 2024 Thika with a different respondent from the present suit. Thus the application cannot stand without a supporting affidavit. Furthermore, the court granted the applicant 14 days to withdraw the application as there is no appeal which has been filed or amend the application to suit the circumstances of the applicant. The applicant failed to amend his application or withdraw it as advised by the court. The



respondent relies on the case of Lukas Ng'ang'a Ndungu vs Emmanuel Kiluu Mutua (Civil Appeal E047 of 2024) [2024] KEHC 6276 (KLR) (6 June 2024) (Ruling) to support her submissions.

The Law

Whether the application is defective.

16. The respondent argues that the application is defective as it does not have a supporting affidavit. I have perused the court record and noted that the supporting affidavit attached to the application is in reference to a different case number being Civil Appeal No. 231 of 2024 between Peter Kaeka t/ a Dama Tours & Safaris and Anne Mueni Felix Malinda yet the present case the respondent is one Veronica Ndunge Muasya. The application was on the face of it defective considering the wording of prayer No.5 in that there was no appeal filed yet, the stay orders were anchored on an existing appeal. On 25th February 2025, counsel for the applicant holding brief for Mr. Kinuthia was granted time to amend their application as directed by the court on 13/07/2025. On 8th April 2025, the matter came up for mention and the applicant's counsel did not attend court and the respondent's counsel informed the court that the applicant did not comply with the earlier orders dated 25th February 2025. Thus the court proceeded to direct that the application be disposed of by way of written submissions. The applicant despite being served with the next mention date and order for submissions failed to attend court on 11th June 2025 and neither did he file his submissions. In essence, the applicant abandoned his application.
17. It is evident that the current application does not have a supporting affidavit and it is defective in form and substance.
18. It is my considered view that the said application is incurably defective and misconceived. The application dated 9th January 2025 is hereby struck out with costs to the respondent.
19. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA ON THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

