



REPUBLIC OF KENYA



KENYA LAW
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**Pesa Swap East Africa Ltd v Muiruri (Civil Appeal E190 of 2024)
[2025] KEHC 10556 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E190 OF 2024
SM MOHOCHI, J
JULY 15, 2025**

BETWEEN

PESA SWAP EAST AFRICA LTD APPLICANT

AND

ESTHER WACUKA MUIRURI RESPONDENT

RULING

1. The Application before this court is dated 19th May, 2025 is brought under the provisions of Article 159 of *the Constitution*; Sections 1A, 1B, 3, 3A and 3B of the *Civil Procedure Act* CAP 21 of the Laws of Kenya; Order 22 rule 22 & 25, Order 45 and Order 51 rule 1 of the Civil Procedure Rules, 2010 and all enabling provisions of Law wherein the Applicant seeks: -
 - i. Spent.
 - ii. That, this Honourable Court be pleased to vary its orders issued in the judgment dated and delivered on 19th March 2025 and more specifically at paragraph 54 (d) "The Applicant shall deposit the balance of the decretal amount in the sum of Kshs. 261,843 into an interest earning Joint account in a bank, to be held by both advocates for the parties within thirty (30) days of this Ruling:"
 - iii. That, this Honourable Court be pleased to replace the clause with one directing the Appellant herein to deposit the balance of the decretal sum into this court's account instead within seven (7) days or as soon as the court shall create an invoice for the purpose of deposit of the funds.
 - iv. That, the Costs of the application be provided for.
2. The Application is premised on the grounds on its face and the annexed affidavit in support sworn by one Christine Katunge Kitale, the Applicant's director



Applicant's case

3. That the Appellant/Applicant filed an application dated 2nd September 2024 which application this Honorable Court delivered a ruling on, on 19th March 2025.
4. That, one of the court's directions was on the deposit of the balance of the decretal sum of Kenya Shillings Two Hundred and Sixty-One Thousand, Eight Hundred and Forty-Three only (Kshs. 261,843/-) into a joint interest earning account to be held by advocates of both parties.
5. That, the Applicant and its advocates are based in Nairobi while the Respondent and her Counsel are based in Nakuru City.
6. That there is non-commitment on the Respondent's counsel in meeting the Appellant's counsel for purposes of opening the account and the Appellant has incurred costs in travelling to Nakuru and coming back to Nairobi, without ever getting to meet the said representatives.
7. That this has prejudiced the Appellants in that the timeline issued by court has lapsed and the Appellant is apprehensive that the actions are deliberate so as to execute against them for non-compliance.
8. That in varying these orders, the Respondent shall not be prejudiced in any way.
9. The Court had on the 20th May 2025 directed that the Application be served upon the Respondent and adequate timelines were provided for the parties to submit written submissions.
10. The Applicant has not demonstrated compliance with the court directions.
11. The Applicant has neither filed any written submissions.
12. The court has not been convinced of the "Non-cooperation" by the Respondent counsel.
13. In the absence of a return of service of the Application upon the Respondent the court is of the view that prejudice shall be occasioned if orders of review were made without affording them a hearing.
14. This court thus finds the Application dated 19th May 2025 to be without any merit and the same is accordingly dismissed.
15. By virtue of non-service, the court shall not grant any cost order.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 15TH DAY OF JULY 2025

MOHOCHI S. M.

JUDGE

