



**Festive Flour Millers Limited v Metrocity Africa Company Limited & 3 others (Miscellaneous Application E037 of 2023) [2024] KEHC 2397 (KLR) (16 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 2397 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS APPLICATION E037 OF 2023  
DO CHEPKWONY, J  
JANUARY 16, 2024**

**BETWEEN**

**FESTIVE FLOUR MILLERS LIMITED ..... APPLICANT**

**AND**

**METROCITY AFRICA COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**TERESIA WAWIRA KIMOTHO ..... 2<sup>ND</sup> RESPONDENT**

**DANIEL NDIRITU WANYIRI ..... 3<sup>RD</sup> RESPONDENT**

**CHARLES MUCHIRI WAKANYI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applicant moved the court through Notice of Motion Application dated 29<sup>th</sup> March, 2023 seeking the following orders:
  - a. That pending the Hearing and determination of this Application and further orders, the Directors of the 1st Respondent Company to appear to be cross examined as to the means they intend to use to satisfy the Judgment in Ruiru Civil Case Number E022 of 2022.
  - b. That the Shareholders and Directors of the 1st Respondent Company do attend court and be examined as to whether the 1st Respondent Company/Judgment Debtor has any property or means of satisfying the decree herein and to produce the Respondent's books of accounts and other documentary evidence showing the same before the court and reveal their business premises.
  - c. That this Honourable Court be pleased to lift and/or pierce the corporate veil of Metro City Africa Limited from the period the debt fell due and or when judgment was entered in Ruiru Civil Case Number E022 of 2022 and order that the Company Director, Eric Holu be held personally liable to the Claimant's claim in Small Claims Case Number 866 of 2021.



- d. That in default of the said Directors, Teresia Wawira Kimotho, Daniel Ndiritu Wanyiri and Charles Muchiri Wakanyi complying with the above court order, they be ordered to personally pay the decretal amount due to the claimant or to be imprisoned and committed to civil jail for a period not less than six (6) months.
    - e. Costs of the application.
  2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Stephen Mbogo as one of the Directors of the Applicant sworn on 29<sup>th</sup> March, 2023. The Respondents did not file any response to the application despite service of the same.
  3. The parties then filed a Consent dated 11<sup>th</sup> April, 2023 which was adopted as an Order of the court on 15<sup>th</sup> June, 2023 in the following terms:
    - a. That the 2<sup>nd</sup> Respondent herein Teresia Wawira Kamotho, takes sole responsibility for all the transactions leading to the cause of action.
    - b. That the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents should be excused from further proceedings of this matter forthwith.
    - c. That this matter does proceed to cross examination on payment of the Judgment amount by the 2<sup>nd</sup> Respondent herein Teresia Wawira Kimotho.
    - d. That costs be provided for.
  4. In essence, the terms of the Consent dealt with prayers No. 1, 2 and 3 of the Application. This Ruling is now in respect to prayer No. 4 of the Application which seeks to have the Director, Teresia Wawira Kimotho ordered to pay the decretal amount due to the claimant or to be imprisoned to civil jail for a period of not less than six (6) months.
  5. According to the Applicant, there being no response by the Respondents the court has been urged to allow the application which has not been opposed and to have warrants of arrest issued against the 2<sup>nd</sup> Respondent, Teresia Wawira Kimotho.
  6. From the history of the matter, the Applicant obtained judgment on 25<sup>th</sup> August, 2022 against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for the sum of Kshs. 2,500,000/= together with costs and interest of the suit. The matter proceeded before the trial court through formal proof hearing. The nature of the dispute is that the Applicant supplied maize flour to the Respondents and they had defaulted in payments and instead issued bounced cheques leading to the filing of the case.
  7. The Applicant then moved this court through the present application which is unopposed. The 2<sup>nd</sup> Respondent has not disputed the debt or the application in question despite service. The judgment of the trial court has not been appealed against or even set aside and therefore the same remains to be valid.
  8. It is trite law that court orders must be obeyed as the same are never issued in vain. Having been found liable to pay the decretal sum of Kshs. 2,500,000/=, the 2<sup>nd</sup> Respondent ought to pay the same.
  9. In the circumstances, the court proceeds to allow the Notice of Motion Application dated 29<sup>th</sup> March, 2023 in terms of prayer No.4 and order the 2<sup>nd</sup> Respondent to pay the Applicant a sum of Kshs. 2,500,000/= within 30 days from the date hereof. In default, the 2<sup>nd</sup> Respondent, Teresia Wawira Kimotho shall be committed to civil jail for a period of 6 months.

It is so ordered.



**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 16<sup>TH</sup> DAY OF JANUARY, 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:-

Mr. Rono holding brief for Mr. Sagini counsel for Defendant

No appearance for and by Plaintiff

Court Assistant - Kinyua

