



United Millers Limited v Ayako & another (Suing as the Legal Representatives of the Estate of Laurent Kabila Ouma) (Miscellaneous Civil Application E202 of 2023) [2024] KEHC 303 (KLR) (23 January 2024) (Ruling)

Neutral citation: [2024] KEHC 303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E202 OF 2023
RE ABURILI, J
JANUARY 23, 2024**

BETWEEN

UNITED MILLERS LIMITED APPLICANT

AND

KEZIA ADHIAMBO AYAKO 1ST RESPONDENT

VICTOR OTIENO OUMA 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF LAURENT
KABILA OUMA**

RULING

1. This Ruling determines the Applicant's Notice of Motion filed under certificate of urgency dated 14th December 2023. The Applicant herein United Millers Limited seeks orders for extension of time within which to file a memorandum of appeal challenging the judgment and decree passed in Kisumu Chief Magistrate's Court in Civil Case No. 223 of 2019 on 26th May 2023 and for stay of execution of decree in the said suit pending the hearing and determination of the intended appeal.
2. The application is supported by the affidavit sworn by Mr. Peter M. Karanja Advocate who explains in detail the reasons for the delay in filing of the appeal among others that no notice of judgment was given to the parties after conclusion of the hearing and the initial date of judgment which was on 6th April 2023 when Judgment was not ready upon which the trial court told parties that he would deliver judgment on notice. That by the time that the Applicant knew of the judgment or outcome, the time for filing of the appeal had lapsed hence the application herein.
3. The Applicant also seeks for stay of execution of the decree arising from the said judgment until the intended appeal is heard and determined.



4. When the application came up for oral hearing on 22nd January 2024, counsel for the Respondent did not oppose the prayer for extension of time to file an appeal out of time.
5. On the prayer for stay, Ms Oluoch submitted that the conditional stay should be given where ½ of the decretal sum is paid out to the Respondent and the balance be deposited in a joint interest earning account of both parties' counsel, an issue which the Applicant's counsel had no instructions on hence the court reserving the matter for Ruling today.

Determination

6. As there is no objection to the granting of leave to file an appeal out of time, I hereby grant leave to the Applicant herein to file and serve a Memorandum of Appeal within fifteen (15) days of this Ruling.
7. On the prayer for stay, Order 42 Rule 6(2) of the *Civil Procedure Rules* is clear that a party seeking stay of execution of decree pending appeal to this court must be prepared to deposit security for the due performance of decree.
8. The security to be deposited is in the discretion of the court. The Respondent has proposed part payment of the decretal sum and the balance be deposited in an interest earning account.
9. Inflation in this country is indeed high. The court must balance the interest of both the decree holder and the judgment debtor who wishes to exercise their right of appeal. The decretal sum is Kshs.6,272,600 arising from a fatal road accident.
10. The applicant has not annexed any copy of draft Memorandum of Appeal for this court to appreciate the nature of the intended appeal whether it is against both liability and quantum or only against quantum.
11. I however observe that from the handwritten judgment annexed, the Applicant did not tender any evidence in rebuttal of the evidence adduced by the Respondent.
12. For the above reasons, I find that it is in the interest of justice that the Respondent decree holder is paid part of the decretal sum and the balance be deposited into a joint interest earning account with a reputable Bank to be held by both counsel for the parties herein and on record at this particular time.
13. Accordingly, I order that there shall be stay of execution of the decree in Kisumu CMCC No. 223 of 2019 pending hearing and determination of the intended appeal once filed and prosecuted, on condition that the Applicant herein pays to the Respondent through her counsel a sum of Kshs.2,500,000 (Two Million, Five Hundred Thousand) and the balance thereof to be deposited in a joint interest earning account to be held by the two parties advocates on record Ms. Peter M. Karanja Advocate and Ms. Staussi Asunah & Oluoch Advocates within the next 30 days of this Ruling.
14. In default, execution to issue.
15. This Ruling to be typed and orders extracted.
16. This file is closed.
17. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF JANUARY, 2024

R. E. ABURILI

JUDGE

