



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 35 OF 2020

SAMSON THURANIRA.....APPELLANT

VERSUS

JUSTUS GITUMA MUGUNA.....1ST RESPONDENT

JOSEPH KIMUNYI.....2ND RESPONDENT

SKYLAND CONTACTORS LTD.....3RD RESPONDENT

COUNTY GOVERNMENT OF MERU.....4TH RESPONDENT

RULING

1. Vide the notice of motion dated 17.12.2020, the applicant seeks orders of stay of execution of the judgment and decree in Meru CMCC No. 290 of 2014 and a review of the ruling of this court delivered on 4.11.2020 in order for the applicant to substitute a sum of Shs.360,000 with on alternative security.

2. Earlier on, the applicant had filed an application for stay of the lower court's judgment, whereby vide a ruling of 4.11.2020, he was directed to deposit the sum of Ksh. 360 000 in court within a period of 30 days.

3. The applicant avers that he has made all efforts to raise the aforementioned amount in vain, and that the respondent is in the process of executing judgment.

4. In his submissions, the applicant states that the economic conditions in the country are gloomy, that the applicant is not in any gainful employment and that he has raised genuine concerns. In support of his case, the applicant has cited the case of **John Mbaya Mucheke vs Kaberia E. Limukii (2020) eKLR** where an applicant was allowed to deposit a title deed instead of cash money. The applicant also relied on the case **The matter of the Estate of George M'Mboroki MERU HCSC NO.357 of 2004** cited in **John Simiyu Khaemba & another vs Cooperative bank of Kenya & another (2019) eKLR** where the court stated that;

“It is Accepted that the court retains certain intrinsic authority in the absence of specific or alternative remedy, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due processes of law, to prevent abuse of its process, to do justice between the parties and to secure a fair trial between them”.

5. The 1st respondent has opposed the application vide a replying affidavit dated 11.1.2021, where he avers that the lower court judgment was a money decree in which the applicant had offered to satisfy the same but later changed his mind before the trial court. That the applicant was ordered by this court to deposit a sum of shs.360,000 in court but he did not comply.

6. The 1st respondent further states that after none compliance with this court's orders of 4.11.2020, the applicant went to Chuka ELC court where a conditional stay was granted for the applicant to deposit a sum of Shs.280,000 within 14 days in default, the conditional stay would lapse. Again the applicant did not comply.

7. In his submissions the respondent urges the court to note that the applicant is abusing the court processes by filing multiple applications in an attempt to avoid liability.

8. I have considered the arguments raised herein as well as the submissions of the parties. Order 45 rule 1 of the civil procedure rules states as follows:

“Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

9. It is quite apparent that when judgment was delivered in the lower court, the first application that the applicant lodged was for settling the decretal amount in instalments. If indeed the applicant had made an offer of whatever kind in that court to pay the amount, it means that he had some means of making good the decree. His contention that he is unemployed and that there are harsh economic conditions cannot form new grounds for a review.

10. Further it is apparent that the circumstances of this case are distinguishable from the cases cited by the applicant; **John Mbaya Mucheke vs Kaberia E. Limukii (supra)** and **John Simiyu Khaemba & another vs Cooperative bank of Kenya & another (supra)**, since in the aforementioned cases there is no evidence that the applicants had offered to pay the decretal amounts. What’s more in the two cases, the sums which the applicants were supposed to pay were huge. In the case of **John Simiyu Khaemba & another vs Cooperative bank of Kenya & another (2019) eKLR**, the amount the applicant was to deposit was Ksh. 3 million, and the final order of the court still required him to pay the whole 3 million albeit in a staggered period of 4 months.

11. This is a case where the applicant even obtained a further variation order in Chuka ELC where he was required to deposit Shs.280,000 in court but he didn’t. The circumstances of this case do not warrant a review of the orders of 4.11.2020. The application dated 17.12.2020 is hence dismissed with costs to respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 14TH DAY OF JULY, 2021 IN PRESENCE OF:

C/A: Kananu

Ms. Mukaburo for 1st respondent

Ms. Masaba for appellant

HON. LUCY. N. MBUGUA

ELC JUDGE