



**Wangombe v Maina (Miscellaneous Civil Application 10 of 2017)
[2024] KEHC 2657 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2657 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
MISCELLANEOUS CIVIL APPLICATION 10 OF 2017
AK NDUNG’U, J
MARCH 12, 2024**

BETWEEN

MAITAI WANGOMBE APPLICANT

AND

NANCY NYAMBURA MAINA RESPONDENT

RULING

1. This ruling resolves the notice of motion herein dated 15/09/2022. The order sought in the application is that this court do authorize the manager Housing Finance Company Limited Nyeri Branch to release all monies deposited in A/C No. 2294743101 together with interest accrued. The Applicant prays for costs.
2. The application is grounded on the fact that an amount of Kshs.235,000/- was deposited in the said bank pending the outcome of Nanyuki High Court Civil Appeal No. 13 of 2017. That appeal was dismissed on the 19/07/2022. It is urged that the said amount was a decretal sum payable to the Applicant herein and since the appeal was dismissed, the entire amount and the interest accrued should be released to the Applicant.
3. The application is further supported by an affidavit of the Applicant in which he deponed that on 28/04/2017, a decree was entered in CMCC No. 137 of 2015. Consequently, the Respondent filed an application to appeal out of time and on 14/12/2017, the application was allowed and she was ordered to deposit a sum of Kshs.235,000/- in an interest joint account in the names of both advocates. The said amount was deposited in Housing Finance of Kenya. The Respondent filed appeal number 13 of 2017 but on 19/07/2022, the appeal was dismissed for want of prosecution. Therefore, since there is no appeal pending, the amount deposited and the interest accrued should be released to his advocate for onward transmission to him.



4. The application is not opposed. There is evidence that the sum in question was deposited in the named bank from orders of court arising from a consent of the parties recorded on 14.12.2017. The Respondent was granted leave to file appeal out of time. Though annexure MW- 5 is an alleged extracted order dismissing HCCCA No. 13 Of 2017, it was necessary in my view for the Applicant to annex certified copies of the proceedings in the subject appeal to authenticate the Order. Annexure MW-5 is an uncertified copy of a court order. This court cannot confirm with any degree of certainty that the appeal was dismissed.
5. In the premises, and in view of the finality of the orders sought, and in the same breadth noting the need to do substantive justice to the parties expeditiously invoking Article 159 of the constitution, it is in the interests of justice that the following orders/directions do issue;
 - i. The Deputy Registrar of this court to call for the record in HCCA No. 13 of 2017.
 - ii. The Applicant to file a further affidavit annexing a certified copy of the outcome in the appeal and serve the Application afresh on the Respondent together with submissions.
 - iii. The Respondent has leave to respond to the application within 14 days of service which response be filed together with submissions.
 - iv. Leave is granted to the Applicant to file a further supplementary affidavit and submissions if desired upon service of response within 3 days.
 - v. These orders/directions be extracted and served for compliance.
 - vi. Mention on 9.4.24 to set a ruling date.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH 2024

A.K. NDUNG’U

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

