



**Equity Bank Limited v Matete; Xplico Insurance Company Ltd (Judgment debtor)  
(Civil Appeal E110 of 2021) [2024] KEHC 3601 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3601 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E110 OF 2021**

**RE ABURILI, J  
APRIL 8, 2024**

**BETWEEN**

**EQUITY BANK LIMITED ..... GARNISHEE**

**AND**

**DR. FRANCIS O.G. MATETE ..... DECREE HOLDER**

**AND**

**XPLICO INSURANCE COMPANY LTD ..... JUDGMENT DEBTOR**

**RULING**

1. From a reading of Section 75 of the *Civil Procedure Act* as read with Order 43 of the *Civil Procedure Rules*, there is no automatic appeal that lies from the Ruling of 31<sup>st</sup> August 2021 to this court in Garnishee proceedings.
2. Leave of the court that made the impugned order should have been sought and obtained first. In the absence of such leave, this court is deprived of any jurisdiction to hear and determine this appeal on its merits.
3. The Appellant's counsel concedes that there is no such leave, which leave was mandatory, to be obtained before the appeal was filed. He applies for the withdrawal of the appeal with no orders as to costs and that the security for due performance of decree to which was deposited in the joint interest earning account of both counsel be released to his Law firm for the Appellant.
4. Whereas withdrawal of suit or an appeal should not be an issue, costs follow the event as both parties have actively participated in the appeal herein wherein an application for stay of execution of decree absolute was argued interpartes and a ruling rendered.
5. That being the case, albeit the parties had not complied with directions of the court on the filing of submissions to canvas the appeal as Mr. Ouru Advocate was said to be unwell, there is no justification



for failing to award costs of the withdrawn appeal to the Respondents and especially the 1<sup>st</sup> Respondent Decree holder.

6. I therefore allow the Appellant to have the appeal herein marked as wholly withdrawn with costs to the 1<sup>st</sup> Respondent assessed at Kshs.20,000 payable within 30 days of today and in default, the 1<sup>st</sup> Respondent shall be at liberty to execute for recovery.
7. On the deposited security for due performance of decree, this court cannot order for its release to the Appellant because the 1<sup>st</sup> Respondent has an interest in the same as the decree holder. I decline to make any orders in favour of the Appellant unless there is a consent to that effect.
8. Accordingly, save for the assessed costs and the security for due performance of decree which shall remain as deposited in the joint advocates' accounts until further orders of this court, this appeal is closed.
9. The orders to be typed and served on both parties' counsel.
10. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 8<sup>TH</sup> DAY OF APRIL, 2024**

**R.E. ABURILI**

**JUDGE**

