



**Kikiu & another v Mutuki (Miscellaneous Application E353 of 2023)
[2024] KEHC 5443 (KLR) (Civ) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E353 OF 2023**

CW MEOLI, J

MAY 2, 2024

BETWEEN

NAHASHON MWANGI KIKIU 1ST APPLICANT

JOSEPH WANJOHI MURIUKI 2ND APPLICANT

AND

ERICK MUTISO MUTUKI RESPONDENT

RULING

1. Nahashon Mwangi Kikiu and Joseph Wanjohi Muriuki (hereafter the 1st and 2nd Applicants) brought the Notice of Motion dated 20th July, 2023 (the Motion) supported by the grounds laid out on its face and the depositions in the affidavit of their advocate, Anita Ndunge. Therein, the Applicants sought review/setting aside of the order made by the court on 20th July, 2023 dismissing the Applicants' Notice of Motion dated 29th May, 2023 for want of prosecution. Additionally, the Applicants sought an order for extension of the timelines for compliance with the order made by the court on 6th June, 2023 requiring the Applicants to deposit a sum of Kshs. 800,000/- into court, by a further 21 days.
2. In her supporting affidavit which largely echoed the grounds, the advocate stated that the Applicants had previously filed the Notice of Motion dated 29th May, 2023 seeking leave to appeal out of time against the decision delivered by the trial court on 31st March, 2023 in Milimani CMCC No. 443 of 2022 and further seeking to stay execution of the said decision, pending the intended appeal. The advocate proceeded to state that upon consideration thereof on 6th June, 2023 the court scheduled the application for inter partes hearing on 20th July, 2023 and further directed the Applicants to deposit in court the sum of Kshs. 800,000/- as a condition for stay.



3. That when the application subsequently came up in court on 20th July, 2023 as scheduled, the deponent advocate requested that the file be placed aside to enable her receive further instructions, to which the court directed that the file would be mentioned at the end of the day's causelist. That unfortunately, the advocate experienced technical challenges with her device and that by the time she managed to log back in, the application had already been dismissed for want of prosecution, necessitating the present. It was her assertion that the Applicants required extension of time by a further 21 days to enable them comply with the condition requiring the deposit of the sum of Kshs. 800,000/- in court by the Applicants, adding that if the Motion is denied, the Applicants will suffer grave loss.
4. Erick Mutiso Mutuki (hereafter the Respondent) opposed the Motion by relying on the replying affidavit sworn by his advocate, Patrick Waiganjo Wachira on 13th October, 2023. Therein the advocate termed the Motion as frivolous, vexatious and an abuse of the court process. The advocate averred that during the pendency of the Notice of Motion dated 29th May, 2023 the Applicants through a different firm of advocates; purported to bring a separate application dated 30th May, 2023 seeking orders similar to those sought in the dismissed application. He further averred that no proper reasons have been presented before the court to warrant the orders sought, citing also the non-compliance on the part of the Applicants, with the condition for deposit. On the premises, the Respondent's advocate urged that the instant Motion be dismissed with costs.
5. The Motion was to be canvassed by way of written submissions, pursuant to the court's directions given on 12th October, 2023. However, when the matter came up in court on 13th December, 2023 for confirmation of compliance, it was noted that none of the parties had complied with the earlier mentioned directions. That being the case, the court directed the Applicants to file their submissions by close of business, failing which the Motion would stand dismissed, with costs to the Respondent. The court further directed that upon the Applicants filing their submissions, service thereof ought be effected upon the Respondent, who would then file his submissions within seven (7) days.
6. Upon the court's perusal of both the physical court file and the CTS platform, it is apparent that there has been non-compliance with the orders made on 13th December, 2023 as no submissions appear to be on record from any of the parties herein.
7. In the circumstances, pursuant to the orders issued by the court on 13th December, 2023 the Notice of Motion dated 20th July, 2023 stands dismissed for want of prosecution, with costs to the Respondent. It is so ordered.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 2ND DAY OF MAY 2024.

C.MEOLI

JUDGE

In the presence of:

For the Applicant: N/A

For the Respondent: Mr. Kiptanui

C/A: Erick

