



REPUBLIC OF KENYA



KENYA LAW
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Nkubitu v Memeu (Civil Appeal E005 of 2024) [2024] KEHC 5864 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E005 OF 2024**

EM MURIITHI, J

MAY 23, 2024

BETWEEN

JOEL NKUBITU APPELLANT

AND

JUSTUS MEMEU RESPONDENT

RULING

1. By a Notice of Motion under certificate of urgency dated 13th February 2024 brought under Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Order 45 and Order 51 Rule 1 of the *Civil Procedure Rules* and all enabling provisions of the law, the appellant seeks:
 1. Spent
 2. That the conditional orders of stay pending appeal granted on 29/01/2024 requiring the applicant to deposit the decretal sum of KSHS 640,100/= within 21 days in a joint interest earning account in the names of the advocates on records be reviewed/varied as follows:
 - a. That the appellant immediately deposits KSHS 100,000/= into the interest earning joint account.
 - b. That the appellant deposits the balance of KSHS 540,100/= into the said account in 5 monthly installments (March – July 2024).
 3. That the costs of this application be in the cause.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Joel Nkubitu, the appellant herein, sworn on even date. He avers that since he is a salaried government employee and a current self sponsored PhD student, he is unable to raise the sum of Ksh. 640,000 as a single payment and he prays to be allowed to deposit Ksh. 100,000 immediately and the balance to be spread out to 5 monthly installments. He is advised by his advocates on record that the requirements for review are provided under section 80 of the *Civil Procedure Act* and Order



45 of the Civil Procedure Rules. He prays for the application to be allowed as no prejudice will be occasioned to the respondent.

3. The application has not been responded to.

Determination

4. Review is provided for under Order 45 Rule 1 of the Civil Procedure Rules 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.”

5. The application was filed timeously on 13/2/2024 while the orders sought to be reviewed were made on 29/1/2024. The appellant prays to be allowed to deposit the decretal sum in the joint interest earning account in installments until July 2024. We are already in May and the appellant has committed to have deposited the last installment in the joint account by July 2024. Although the appeal is yet to be set down for hearing, this court will make the necessary order for costs, to ameliorate any prejudice that may be occasioned on the respondent.

Orders

6. Accordingly, in the interest of substantial justice to the parties herein, this court will, in the spirit of Article 159 (2) (d) of the Constitution and the overriding objectives under Sections 1A and 1B of the Civil Procedure Act, allow the application dated 13/2/2024 in terms of prayer No. 2 as follows:
 1. The conditional orders of stay pending appeal granted on 29/01/2024 requiring the applicant to deposit the decretal sum of Ksh.640,100/= within 21 days in a joint interest earning account in the names of the advocates on records are hereby reviewed/varied as follows:
 - a. The appellant shall deposit Ksh.100,000/= into the interest earning joint account forthwith.
 - b. The appellant shall deposit the balance of Ksh.540,100/= into the said account in 5 monthly installments (March – July 2024).
 2. The costs of the application shall be borne by the appellant/applicant.

Order accordingly.

DATED AND DELIVERED THIS 23RD DAY OF MAY, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Anguche for the Appellant/Applicant.



Mr. Mungai for the Respondent.

