



REPUBLIC OF KENYA



**Wanjeru v Orient Sacco Society Limited (Civil Appeal E938 of 2023)  
[2024] KEHC 6118 (KLR) (Civ) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6118 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E938 OF 2023**

**AN ONGERI, J  
MAY 24, 2024**

**BETWEEN**

**JANE WANGARI WANJERU ..... APPELLANT**

**AND**

**ORIENT SACCO SOCIETY LIMITED ..... RESPONDENT**

**RULING**

1. The applicant herein Jane Wanjeru filed the application dated 24/10/2023 seeking stay of execution of the judgment and decree of the Cooperative Tribunal delivered on 31/8/2023 pending the hearing and determination of this appeal.
2. The application is based on the following grounds;
  - i. That judgment by the trial court was entered on the 31<sup>st</sup> August 2013 wherein the appellant was condemned to pay costs amounting to Kenya shillings one million, five hundred and twenty two thousand, five hundred shillings (1,522,500/=).
  - ii. That the applicant, being aggrieved by the judgment of the tribunal, exercised her right of appeal by filing a memorandum of appeal on the 15<sup>th</sup> September 2023.
  - iii. That the respondent has now extracted the decree dated the 19<sup>th</sup> October 2023 in Tribunal Case Number CTC 30 of 2021 and intends to execute it against the applicant whereas the appeal is still pending determination.
  - iv. That the appellants appeal is arguable and raises triable issues which should be adjudicated upon by this court.



- v. That if by the time the appeal is heard and determined, and in the event that it is successful, the proceedings in the trial court will have been determined thereby causing great loss and prejudice against the applicant.
  - vi. That the appellant is desirous of having the appeal heard on merits and has even applied inter alia for certified typed proceedings.
  - vii. That for purposes of ensuring the efficient disposal of the business of the court, the efficient use of the available judicial and administrative resources and ensuring justice to all parties herein, it is necessary for this court to stay the proceedings in the trial court until the appeal is heard and determined.
  - viii. That this application has been made without unreasonable delay.
3. The application is supported by the affidavit of the applicant sworn on 24/10/2023 in which she deposed as follows;
- i. That I am the Appellant/ Applicant herein, fully conversant with the facts of this case and I am therefore competent to swear this affidavit.
  - ii. That the Respondent herein filed a claim against me in in the Co-operative Tribunal at Nairobi Case Number CTC 30 of 2021, claiming the amount of Kenya Shillings Two Million Five Hundred and Thirty Seven, and Seventy one Shillings (Ksh.2,537,071/=)
  - iii. That Judgment in the Co-operative Tribunal at Nairobi Case Number CTC 30 of 2021 was entered on the 31<sup>st</sup> day of August 2023, against me in favour of the Respondent in the amount of Kenya Shillings One Million, Five Hundred and Twenty Two Thousand Five Hundred Shillings (1,522,500/=)
  - iv. That being aggrieved by the Judgment of the Tribunal, I instructed my Advocates on record to lodge an appeal by Filing a Memorandum of Appeal on the 15<sup>th</sup> September 2023.
  - v. That I have applied for certified typed proceedings, and typed Judgment but the same are yet to be furnished by the court. (Annexed herein and marked 'JWW" is a copy of a letter dated 5<sup>th</sup> September 2023, 1 1<sup>th</sup> September 2023 and email correspondences sent and received by the Co-operative Tribunal)
  - vi. That I have also sought to move this matter forward by lodging a request at the High Court Registry on the 16<sup>th</sup> October 2023. (Annexed herein and Marked "JWWI " is a copy of a letter dated 16<sup>th</sup> October 2023 and a receipt issued on the 1 7<sup>th</sup> October 2023).
  - vii. That the Appeal is arguable and raises triable issues which should be adjudicated upon by this Court before the proceedings in the trial court proceed.
  - viii. That I only learnt of the extracted Decree on the 23<sup>rd</sup> October 2023, with an email having being sent to my Advocates on record on the evening of 19<sup>th</sup> October 2023. The 20<sup>th</sup> October 2023 was a public holiday.
  - ix. Thatthe application has therefore been made without unreasonable delay.
  - xi. Thatthe Respondent has every intention of executing the Decree and has issued this notification via email. (Annexed herein and Marked "JWW2" is a copy of the Decree 19<sup>th</sup> October 2023 and an email by the Respondents Counsel)



- xii. That it is necessary for this Honourable Court to issue interim Orders staying the proceedings therein.
  - vii. That for purposes of ensuring the efficient disposal of the business of the court, the efficient use of the available judicial and administrative resources and ensuring justice to all parties herein, it is necessary for this court to stay the proceedings in the Co-operative Tribunal at Nairobi Case Number CTC 30 of 2021 until the Appeal is heard and determined
  - xiii. That I swear this affidavit in support of the orders sought herein.
  - viv. That what is deposed to herein is true to the best of my knowledge, information and belief save for matters deposed on information and the sources have been disclosed.
4. The applicant was granted stay of execution on condition that she deposits ½ the decretal sum in court within 30 days from 25/10/2023 but she failed and/or declined to abide by the orders of the court.
  5. I find that the applicant is not deserving of the orders she is seeking since she is in contempt of court for compliance.
  6. I dismiss the application dated 24/10/2023 for non-compliance with the orders of this court issued on 25/10/2023.
  7. Each party to bear its own costs of the application

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24<sup>TH</sup> DAY OF MAY, 2024.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent

