



**Mbukinya Success Limited v Ndonji & another (Civil Appeal
E018 of 2023) [2024] KEHC 7255 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E018 OF 2023
RE ABURILI, J
JUNE 10, 2024**

BETWEEN

MBUKINYA SUCCESS LIMITED APPELLANT

AND

CELINE AKINYI NDONJI 1ST RESPONDENT

**EUNICE ATIENO (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF MELVIN OTIENO NDONJI – DECEASED) 2ND RESPONDENT**

RULING

1. The appeal herein was determined on March 22, 2024, with the court dismissing the appeal and upholding the judgment of the lower court in Kisumu CMCC No. 463 of 2016.
2. The Appellant had vide HCC Misc. Application No. E085 of 2022 sought leave of court to appeal out of time for the stay of execution of decree in the lower court in Kisumu CMCC No. 463 of 2016 pending the filing, hearing and determination of the intended appeal.
3. As a pre-condition for stay of execution of decree pending the determination of the appeal which was filed herein, J. Kamau J at paragraph 4 and 5 of the Ruling of January 25, 2023 granted a conditional stay of execution by directing the Applicant/Appellant herein to deposit Kshs.1,984,220 into a joint interest earning account to be held by both counsel for the parties within 120 days of the order and in default, the Respondent decree holder would be at liberty to take appropriate action.
4. The monies were subsequently deposited with Equity Bank Nairobi Branch in the joint interest earning account held by Kimondo Gachoka & Company Advocates & M. A. Okumu & Company Advocates. The account number is given as follows: 0180184xxxxxx.
5. Following the dismissal of this appeal with each parte to bear its own costs on March 22, 2024, what remained was for the parties' counsel to jointly instruct the Bank to release the deposited money with



interest to the decree holder/1st Respondent through her advocated for onward transmission to the 1st Respondent.

6. Since March 2024, the Appellant's counsel have not signed the consent to have the monies released. Delay defeats equity. They have not given any reason for the delay in signing off the released of the deposited decretal sum, which delay is denying the 1st Respondent the fruits of her lawfully obtained judgment.
7. In the premises, I hereby order that:
 1. All monies held in the joint interest earning account at Equity Bank, Nairobi Branch in the names of Kimondo Gachoka & Company Advocates and M.A. Okumu & Company Advocates Account No. 0180184xxxxxx as deposited pursuant to the orders of this court made on January 25, 2023 in Kisumu HCC Misc. No. E085 of 2022 as a precondition for stay of execution of decree in Kisumu CMCC No. 463 of 2016 pending hearing and determination of the appeal, which appeal was heard on merit and dismissed on March 23, 2024 shall forthwith be released to the 1st Respondent through her advocates M. A. Okumu & Company Advocates for onward transmission to the decree holder.
 2. Equity Bank Limited Nairobi Branch is hereby ordered to release the said sum of Kshs.1,984,220 together with accrued interest to the firm of M. A. Okumu & Company Advocates forthwith upon receipt of this order, which sum of money shall be released to account No. 97837xxxxx at Housing Finance Company Limited Kisumu Branch, in the name of M. A. Okumu & Company Advocates.
 3. Each party shall bear costs of the application dated May 17, 2014.
8. This file is closed.
9. Ruling and order to be typed/extracted forthwith.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 10TH DAY OF JUNE, 2024

R. E. ABURILI

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

