



Kesian Hardware Limited v Runji (Suing as the administrator of the Estate of Peter Wanjau Matemo (Deceased) (Civil Appeal 533 of 2024) [2024] KEHC 12327 (KLR) (Civ) (15 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12327 (KLR)

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

CIVIL

CIVIL APPEAL 533 OF 2024

JN MULWA, J

OCTOBER 15, 2024

BETWEEN

KESIAN HARDWARE LIMITED APPELLANT

AND

EUNICE NYAGA RUNJI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF PETER WANJAU MATEMO (DECEASED)) RESPONDENT

RULING

1. Judgment in Milimani CMCC No. E395 of 2023 was delivered on 22/03/2024 and an award of Kshs. 3,724,635/= made to the Respondent. Being aggrieved the Appellant lodged this Appeal against both liability and quantum by a Memorandum of Appeal dated 22/04/2024.
2. By an Application dated 20/06/2024 the appellant seeks stay of execution orders pending hearing and determination of the appeal based on the Supporting Affidavit sworn on 26/04/2024 by one Anthony S. Keen. The motion is grounded on Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#).
3. The application is opposed by a Replying Affidavit of the respondent sworn on 8/07/2024 and a Notice of Preliminary Objection dated 8/07/2024 on grounds that the application is *res-judicata*.
4. The Respondent states that on 26/04/2024 the court granted the applicant conditional stay orders which the appellant failed to comply on its application dated 24/04/2024, that the instant application is therefore *res-judicata* having been determined by the court and orders granted on 26/04/2024 – dismissing the application.
5. In addition, the Respondent acknowledges payment of Kshs. 1,863,818/= into the Stanbic Bank Account being 50% leaving 50% unpaid as at 6/06/2024.



The Appellant thus prays to be granted stay orders of execution pending hearing and determination of the appeal upon provision of security for due performance of the decree by provision of a bank guarantee in favour of the Respondent for the balance.

6. The court has perused the trial court's judgment and Memorandum of Appeal. The trial court held the appellants driver/agent 100% liable for the accident and awarded damages to the deceased's estate in the sum of Kshs. 3,724,635 out of which 50% has since been deposited with the Respondents Advocates as security despite out of time and contrary to court order of 26/04/2024.
7. On whether the motion dated 20/06/2024 is *res-judicata* it is trite that Section 7 of the [Civil Procedure Act](#) bars a court from hearing a matter that has been heard and determined by a court of competent jurisdiction. In respect thereto, there is no dispute that the appellant had filed an earlier application dated 24/04/2024, obtained interim stay orders which it failed to comply with, then came back for same orders in the instant motion dated 20/06/2024.
8. I fully agree with the Respondent that this is gross abuse of court process as court orders are not issued in vain. The Preliminary Objection is therefore allowed resulting to the dismissal of the application dated 20/06/2024 with costs to the respondent.
9. The court alludes to the applicants having deposited 50% of the decretal sum into the Respondent's Advocates Bank Account at Stanbic Bank Ltd. This was contrary to the court orders of 26/04/2026.
10. To that extent therefore, the court declines to sanitize an illegality and proceed to dismiss the motion dated 20/06/2024 with costs as being *res-judicata*. However if indeed the said money was paid into the Respondents bank account, it shall be deemed to be 50% payment of the judgment sum to the Respondent via its advocates.
11. Let the Appellant file the Record of Appeal within 60 days.
Mention for further directions on the Appeal on 20/2/2025.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF OCTOBER 2024.

JANET MULWA

JUDGE

