



Kenya Women Microfinance Bank Limited v Mwaura (Civil Appeal E077 of 2023) [2024] KEHC 12216 (KLR) (4 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E077 OF 2023
DO CHEPKWONY, J
OCTOBER 4, 2024**

BETWEEN

KENYA WOMEN MICROFINANCE BANK LIMITED APPELLANT

AND

SIMON KARANJA MWAURA RESPONDENT

RULING

1. What is before the court for determination is the Notice of Motion Application dated 19th June, 2024, where the Applicant is seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. Pending the hearing and determination of this application, a stay of execution do issue against the judgment and decree issued in Kikuyu CMCC no 209 of 2017.
 - d. This Honourable court be pleased to review its ruling of 17th May, 2024 and enlarge the time granted to the Appellant to deposit the decretal sum in court by a further 21 days from the date of the orders of this court.
 - e. Costs of this application be in the cause.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of 19th June, 2024. According to the Applicant, Judgment in the matter was delivered on 16th February, 2023 and he lodged the present appeal alongside an application for stay of execution vide a Notice of Motion dated 16th March, 2023. The court delivered a Ruling on the said application on 17th May, 2024 where it granted a conditional order of stay of execution and directed that the Appellant deposits a sum of ksh 200,000/= in court within thirty (30) days from the date of the said ruling. The Applicant contends



that he has been following up with the correct registry for the issuance of an invoice for payment which could not be processed as the court file was still in the Judge's Chambers.

3. It is the Applicant's contention that the period of thirty (30) days within which he was to deposit the decretal sum has since lapsed and he is thus exposed to execution. He contends that he is ready and willing to deposit the decretal sum as directed by the court but the administrative procedures in court pose a great challenge. He has urged the court to reinstate the stay of execution orders, enlarge the timelines for deposit of the decretal sum and for the court file to be released to the registry. He holds that the application has been filed without any unreasonable delay and no prejudice will be occasioned to the Respondent and as such it would be in the interest of justice that the application be allowed.
4. The Respondent filed Replying Affidavit of Simon Karanja Mwaura sworn on 2nd July, 2024, wherein he has averred that the Appellant has not filed any appeal that can be determined by the court. He has also averred that a decree has neither been extracted nor is there any threat of execution against the Appellant. According to the Respondent, he is yet to prefer any mode of execution, hence the Appellant has not shown that it stands to suffer any irreparable loss or demonstrated its ability to furnish the court with any security for due performance of the Judgment and decree. The Respondent has urged that the application be dismissed with costs as the same is premature.
5. The court directed the parties to canvass the application by way of written submissions. The applicant filed its submissions dated 9th September, 2024 and at the time of writing this ruling, the Respondent had not filed his submissions.
6. This court has read through and considered the arguments by both parties in their respective affidavits in support and against the application alongside the Appellant's submissions and find the main issue for determination being whether the application has merit to warrant the orders sought.
7. The court record confirms that a ruling on similar application dated 16th March, 2023 was delivered on 17th May, 2024 wherein it gave express orders that the entire decretal sum be deposited in court and a Record of Appeal filed within thirty (30) days from the date of its delivery. The court further directed that the failure to comply with the said conditions will render the application dismissed and the Respondent would then be at liberty to execute.
8. However, the court has considered the reasons the Applicant has given for their failure to comply with the court orders issued on 17th May, 2024 being that it was unable to deposit the decretal sum in court due to the unavailability of the court file and other administrative challenges. The court has taken note of the annexures attached to the application particularly the letter dated 29th May, 2024 requesting for an invoice in support of the Applicant's explanation.
9. In view of the foregoing, the court finds that the application is meritorious and is inclined to grant the Applicant another chance to comply with its court orders issued on 17th May, 2023. The Notice of Motion application dated 19th June, 2024 is hereby allowed on the following terms:-
 - a. The ruling delivered on 17th May, 2024 is hereby reviewed and order of stay of execution issued herein reinstated.
 - b. The timelines for deposit of decretal sum of ksh 200,000.00 in court are hereby enlarged/extended for a further twenty-one (21) days.
 - c. The court file is forthwith released to the court registry.
 - d. In default of order no (b) the application shall be dismissed and no further application shall be entertained by the court.



e. Mention on 28th October, 2024 for compliance of directions issued and take further directions.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 4TH DAY OF OCTOBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Wairimu holding brief for Mr. Kabogo counsel for Appellant

No appearance for and by Respondent

Court Assistant - Martin

