



**Mutwiri v Mwangi (Miscellaneous Application E066 of 2023)
[2024] KEHC 12065 (KLR) (Civ) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E066 OF 2023
JM OMIDO, J
OCTOBER 8, 2024**

BETWEEN

LLOYD KIRIMI MUTWIRI APPLICANT

AND

JOHN KAHUHA MWANGI RESPONDENT

RULING

1. This Ruling emanates from the application dated 23rd November 2023 brought by the Respondent John Kahuha Mwangi who seeks the following prayers against the Applicant Lloyd Kirimi Mutwiri:-
 - a. That having breached and totally failed to abide by the conditional orders of this court issued on 11th May 2023, this court do order and vacate its stay of execution orders as issued.
 - b. That this court do find and order that having breached the conditional order, no appeal lies from the judgment of Hon. G.M. Gitonga (PM) and, as such, execution can proceed.
 - c. That an order do issue that the sum of Ksh.400,000/= deposited in this court vide KCB Bank deposit slip of 2nd March, 2023 with the Court Account by M/S Kimondo Gachoka & Co. Advocates being part payment of the decretal sum be released and paid over to M/S Namada & Co. Advocates for onward payment to the plaintiff.
 - d. That the costs of this application be borne by the Respondent, Lloyd Kirimi Mutwiri in any event.
2. The motion is supported by the affidavit of John Kahuha Mwangi.
3. The first ground upon which the application is premised is that the Applicant has failed to abide by, and is in breach of the conditional order of the court issued on 11th May, 2023 directing that the balance



of the decretal amount be deposited into court within 30 days, further to the amount of Ksh.400,000/= that had already been deposited.

4. The second ground preferred by the Applicant in the application is that no appeal lies as the conditional orders were not complied with.
5. The application is opposed vide a Replying Affidavit sworn on 30th July 2024 by Florence Muito, Advocate.
6. The deponent in the Replying Affidavit states on oath that the Motion is not merited as there is already an appeal filed, being HCCA E077 of 2023 and that there was compliance in terms of depositing security.
7. I have considered the application, the response and the rival oral submissions made by counsel for the two parties.
8. Having perused the file in its entirety, it is instructive from the record that on 12th February 2023, this Court (Meoli J.), ordered that the Applicant deposits Ksh.400,000/= by close of business on 1st March, 2023 on the basis of which an interim order of stay of execution was issued. The Applicant complied with the said order.
9. On 11th May 2023, the parties recorded a consent to which the application dated 9th February 2023 was allowed on condition that the Applicant deposits into court the balance of the decretal sum further to the Ksh.400,000/= within 30 days, as a condition for stay and for the appeal to be filed out of time.
10. The record is clear that the balance of the decretal sum was not deposited into court as ordered on 11th May 2023.
11. It is further clear to me, upon perusal of HCCA No. E077 of 2023 which was placed before me alongside this matter, that the said file does not concern the parties herein. As such, my persuasion is that there is no appeal filed, contrary to the Applicant's depositions.
12. It is to be noted that the orders of 12th February, 2023 and 11th May, 2023 were issued as conditions for granting stay of execution and for allowing the filing of an appeal out of time.
13. That then means, in my view that failure to deposit the amounts, particularly as ordered on 11th May, 2023 that the stay order lapsed on the expiry of 30 days and that the leave granted to file the appeal out of time stood reversed and/or vacated. In any event, as I have above stated, there is no appeal filed.
14. The foregoing being the position, I find the Motion dated 23rd November 2023 to be meritorious and I proceed to allow it in the following terms:
 - a. The stay of execution orders granted herein in respect of the judgment and decree issued in CMCC 11363 of 2018 are hereby vacated.
 - b. The amount of Ksh.400,000/= deposited as security pursuant to the order of 12th February, 2023 to be released to Namada & Co. Advocates forthwith for onward transmission to the Respondent.
 - c. The Respondent is at liberty to pursue the balance of the decretal amount through the available legal avenues.
 - d. Costs of this application to be borne by the Applicant and to form part of the decree in CMCC No. 11363 of 2018.
 - e. As there is no appeal filed, this file is hereby closed.



DELIVERED (VIRTUALLY), DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF OCTOBER, 2024.

JOE M. OMIDO

JUDGE

For Applicant: Ms Muito.

For Respondent: Mr. Emirondo.

Court Assistant: Ms. Njoroge.

