



REPUBLIC OF KENYA



**Mwinzi v Kimanzi; Kiberiti Merchants Limited (Interested Party) (Civil Case E011 of 2021) [2023] KEHC 595 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 595 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E011 OF 2021  
HK CHEMITEI, J  
FEBRUARY 9, 2023**

**BETWEEN**

**CAROLINE MWINZI ..... PLAINTIFF**

**AND**

**GEORGE NGUI KIMANZI ..... DEFENDANT**

**AND**

**KIBERITI MERCHANTS LIMITED ..... INTERESTED PARTY**

**RULING**

1. In his Notice of Motion dated 14<sup>th</sup> November 2022, the applicant prays for the following orders;
  - (a) That the court be pleased to grant stay of execution and or implementation of its ruling delivered on 29<sup>th</sup> September 2022 pending the hearing and determination of the appeal at the court appeal.
2. The application is supported by the applicants sworn affidavit dated even date as well as the grounds on the face thereof.
3. Basically, all that the applicant is praying for is an order staying the ruling of this court delivered on 29<sup>th</sup> September 2022 as he was dissatisfied with the same and that it was his constitutional right to seek redress in the said court. That failure to do so will render the appeal an exercise in futility.
4. The respondent has opposed the application through the grounds of opposition dated 21<sup>st</sup> November 2022 and her replying affidavit sworn on the same date. She avers that the application ought not to be allowed as the Notice of Appeal was filed way out of time and that she was in the process of applying to have it struck out.



5. She went on to give details of how she has tried to have the order by this court implemented especially opening of accounts and the management of the properties. It is her case that the applicant has completely failed to adhere to the said directives but has instead frustrated the whole process and thus the filing of this application is one of the ways he has chosen to do so.
6. The court is well seized of this matter. The directives issued on the 29<sup>th</sup> September 2022 are clear and does not need further clarification.
7. It is however the legal right of the applicant to seek further redress from the higher court, namely Court of Appeal. This however must be balanced with the interest of all the affected parties.
8. It is not disputed that the respondent at least from the attachments to the affidavit has attempted to effect the orders of this court. There is nothing to demonstrate that the applicant has complied. There is no explanation why the accounts have not been opened yet nor an appointment of an estate agent.
9. To grant the prayers sought by the applicant without concomitant response to compliance of this court's orders will not augur well for the cause of justice. The applicant has not demonstrated any iota of loss he stands to suffer should the orders not be granted.
10. Looking at the said orders, in my respectful view, none of the parties including the applicant stand to suffer should the same be implemented. They were simply to preserve actively the status quo pending the determination of the suit.
11. Nonetheless, it is absolutely proper and right for the applicant to seek further redress from the Court of Appeal. This court however does not find an order of stay pending the intended appeal meritorious for now since as indicated above, the applicant has not persuaded this court what he will suffer. The intended appeal will not be rendered nugatory in my view as the subject property has not passed to any other third party. The monthly proceeds in any case are and shall still be accounted for.
12. In the premises, the application is not merited and the same is hereby dismissed with costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 9<sup>TH</sup> FEBRUARY 2023.**

**H. K. CHEMITEI**

**JUDGE**

