



Wachaga v Wakhungu t/a Diwawe Construction Company (Civil Appeal E304 of 2022) [2023] KEHC 2149 (KLR) (Civ) (9 February 2023) (Ruling)

Neutral citation: [2023] KEHC 2149 (KLR)

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

**CIVIL
CIVIL APPEAL E304 OF 2022**

DO CHEPKWONY, J

FEBRUARY 9, 2023

BETWEEN

ALICE WANJIRU WACHAGA APPLICANT

AND

**EMMANUEL WAKHUNGU T/A DIWAWE CONSTRUCTION
COMPANY RESPONDENT**

RULING

1. This matter is for mention for parties to confirm compliance with orders and or directions issued vide a ruling delivered on November 24, 2022.
2. Upon listening to counsel for the respondent, it is confirmed that the applicant has not attended court, either by herself and her counsel. There is even no representation to explain the absence.
3. Further, it is confirmed that the applicant has not complied with orders which were issued vide the ruling dated November 24, 2022 as there is no evidence to confirm that the decretal sum has been deposited in a joint-interest-earning account to be held by both advocates for the parties neither has the applicant filed and served a record of appeal.
4. Although the ruling was delivered in the absence of the applicant, the same had been cause-listed and the same posted on the divisions portal. And so was the mention date for today.
5. The applicant vide a notice of motion application dated May 30, 2022 sought for stay of execution of the Judgment and decree in SCC COMM No E895 of 2022 and all consequential orders thereto pending the hearing and determination of the appeal. The same was allowed but on condition the appellants deposit the entire decretal sum in a joint interest-earning account of both court for the parties within 45 days and files a record of appeal within 30 days from the date of ruling. It was further



ordered that if the applicant failed to comply with the said orders then the order of stay of execution would automatically lapse.

6. The appellant has not complied with order(a) and (b) of the ruling delivered on November 24, 2022. The appellant has also failed to attend court or offer any explanation for non-compliance of the said orders.
7. In view of the non-compliance with orders issued vide a ruling delivered on November 24, 2022, the default Clause at order No(d) of the ruling delivered on November 24, 2022 be and is hereby invoked. Subsequently, the order for stay of execution issued herein has lapsed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Waringa counsel for Respondent

No appearance for and by Appellant

Court Assistant - Simon

