



Rutere v Makena (Suing as legal representative and administrator of the Estate of Branson Mwenda) (Miscellaneous Civil Application E080 of 2022) [2023] KEHC 2522 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E080 OF 2022
TW CHERERE, J
MARCH 23, 2023**

BETWEEN

PATRICK MWENDA RUTERE APPELLANT

AND

HELLEN MAKENA (SUING AS LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF BRANSON MWENDA) RESPONDENT

RULING

1. On September 24, 2021, judgment in Meru CMCC 139 of 2020 was entered in favour of the Respondent as against the Appellant/Applicant for Kes1,300,000/- plus costs and interest.
2. By a notice of motion dated and filed on December 7, 2022, Applicant seeks orders for:
 1. Stay of execution of judgment and decree in judgment in Meru CMCC 139 of 2020 pending the hearing and determination of this application
 2. Stay of declaratory suit Meru CMCC E066 of 2022 pending the hearing and determination of this application
 3. Leave to appeal the judgment dated September 24, 2021 out of time
 4. Costs be in the cause
3. The notice of motion is premised on grounds among others that the Appellant is aggrieved by the judgment of the trial court; intends to file an appeal; that the delay was caused by Covid-19 pandemic and that Applicant is willing to provide security.



4. The application is also supported by an affidavit sworn by the Applicant on December 7, 2022 reiterating the grounds on the face of the application.
5. In opposing the Application, Respondent by her affidavit sworn on February 27, 2022 avers that judgment was entered on September 24, 2021 but Appellant/Applicant failed to settle the claim and that this application is meant to delay the Respondent from enjoying the fruits of the judgment.

Analysis and Determination

6. I have considered the application in light of affidavits on record and the Respondent's submissions and the issue for determination is whether the orders sought are merited.
7. There is no dispute that the impugned judgment which was entered on September 24, 2021 remains unsettled to date.
8. That the Applicant could not file an appeal due to the Covid-19 pandemic is unsustainable for the reason that whereas it is true that court operations were temporarily affected, this did not extend for more than a month the Judiciary having put in place mechanisms to enable parties to file their pleading electronically.
9. Be as it may, even if indeed the delay in filing the appeal was caused by Covid-19 pandemic, the same did not extend until December, 2022 when this application was filed.
10. Clearly, it appears to me that the Applicant has woken up from slumber only after Respondent filed Declaratory Suit Meru CMCC E066 of 2022.
11. What amounts to unreasonable delay will depend on the individual circumstances of each case. (See *Jaber Mobsen Ali and Anor vs Priscilla B Boit and Anor* (2014) eKLR where the court found a delay of one month and 4 days to be unreasonable. In this case, I find that a 15-month delay is inordinate and has not been explained to the satisfaction of the court.
12. It is an equitable maxim that delay defeats equity or equity aids the vigilant and not the indolent. Granting the orders sought in this application and staying the execution of a regular judgment will be highly prejudicial to the Respondent.
13. As much as it should be the court's last resort to deny a party a chance to ventilate its case to the highest appeal level, a party approaching the court for a discretionary order must act diligently. This court cannot be said to be promoting the overriding objective to facilitate the just, expeditious, proportionate and affordable resolution of disputes if it is to allow parties to deliberately delay court processes.
14. In the end, the notice of motion dated and filed on December 7, 2022 is allowed only to the extent that Applicant is granted leave to appeal out of time.
15. Applicant shall pay costs of this application to the Respondent.

DATED IN MERU THIS 23RD DAY OF MARCH 2023

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant/Applicant - Ms.Laboso for Kimondo & Gachoka & Co Advocates



For Respondent - Ms. Gachohi for G,M.Wanjohi, Mutuma & Co. Advocates

