



**Ngugi v Kenya Power & Lighting Company (Civil Appeal E370 of 2020)  
[2024] KEHC 14458 (KLR) (Civ) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14458 (KLR)

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

**CIVIL**

**CIVIL APPEAL E370 OF 2020**

**LP KASSAN, J**

**NOVEMBER 19, 2024**

**BETWEEN**

**HEZEKIAH NGUGI ..... APPELLANT**

**AND**

**KENYA POWER & LIGHTING COMPANY ..... DEFENDANT**

**JUDGMENT**

1. This is an Appeal from the Ruling of Honourable Wanjala who stuck out the Plaintiff Suit on 31 October 2019. A brief history of this Appeal is that the decretal amount was deposited in court instead of a Joint interest earning Account as directed by the High Court. The Respondent lost interest that the decretal amount could have generated during the pendency of the Appeal which was later dismissed. To recover this loss and the balance of the decretal amount, the Respondent herein filed an Application in the lower court which is a subject of this Appeal. I have read submissions, Affidavits and the proceedings in general. The following are key issues in determining this Appeal;

1. What is the remedy in a situation where the Court orders release of decretal amount but part of it is released? The answer here is obvious; - go to the same court under the relevant provisions of the law to claim the balance and not to file a separate suit. In this case, the Appellant was claiming a balance of Ksh 34,000 and he chose to initiate a fresh suit at the lower court instead. If this new suit was to be allowed to proceed to its conclusion, there would be a waste of judicial time, resources and delays compared to a simple application at the court that issued an order of release of the funds.
2. What happens when a party in a suit fails to obey a court order? In this case, the moneys were deposited in court and not in a joint interest earning account. The answer is that the party aggrieved is expected to move the same court that issued the order to seek compliance. The Respondent herein explained that he was unable to comply with the order of depositing the



decretal amount on time. Should one bring a fresh suit or seek remedy of loss of interest in the same court whose order was disobeyed? When the high court ordered for release of the decretal amount, the Respondent ought to have brought the issue on the expected amount instead of proceeding to take what he considered as less and further proceeding to tax bill of costs on less decretal amount. Again a fresh suit here has the same ramification as indicated above.

3. Can a fresh suit be filed at the lower court on matters seized and fully determined by the High court or to claim compensation for loss occasioned by noncompliance of a high court order? This to me, would be a very rare situation because of hierachy of courts.
  4. Which is the right court that can interpret orders: - the one that issued the order or another court? For instance, in this Appeal, the High Court in its order dated 26th February 2024 directed that " Stay is hereby granted on condition that the decretal amount is deposited in a joint advocate interest earning account in High court KCB account..." One is tempted to interpret that the Account should be in the names of both advocates at KCB which is located at High court building but the addition of the words " in High Court KCB account" complicates directions because there is no way that a joint interest earning account can be in High Court KCB account (which actually is an independent account that exists for Judiciary). To me, the correct court to interpret an order is the one that issued that Order.
2. Most precedents have described striking out of suits as draconian- but with exceptions which I find it here.
  3. In a nutshell I find no reason to disturb the Lower Court Ruling and thus the Appeal is dismissed and given the circumstances of this case, that is pending balance of decretal amount and alleged breach of High Court Order, each party shall bear own costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19<sup>TH</sup> DAY OF NOVEMBER 2024.**

**L. KASSAN**

**JUDGE**

In the presence of:

Mbugua for the Appellant

Nyangena for Respondent

Court Assistant – Carol

