

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 46 OF 2020

SILVANUS KIZITO.....APPLICANT

VERSUS

EDITH NKIROTE MWITI.....RESPONDENT

RULING

1. It is clear from the submissions made by both sides that the appellant did pay to Mr. Kaburu's client the sum of Kshs. 1,500,000 in time and in full compliance with the orders of the court.
2. It is equally clear that the balance then to be deposited in the escrow account ought to have been Kshs. 2,362,498. That has been done partially and not in full. That is a clear default by the appellant.
3. However, I appreciate the appellant's counsel to say that the payment is by the insurer and not the appellant in person. I also appreciate that the Insurance Act, caps the liability of an insurer to Kshs. 3,000,000 for each single claim.
4. That the appellant has complied with the court order to a very large extent when put in the light of the request by its counsel for a period of only 14 days to make good the default, persuades me that the appellant is acting in good faith and not one out of disregard the court orders.
5. For that reason, I do invoke the overriding objectives of the court and the inherent power of the court and direct that the short fall be deposited into the escrow account already established within 14 days from today. For that reason the timelines set in the ruling of 15/2/2021 is thus enlarged by another 14 days. Time should be of essence.
6. Having said so, and noting that the appeal has been admitted and appellants submissions filed, I do consider it not to serve the interests of justice in the appeal, to allow execution to proceed and stall the determination of this appeal, by remitting the trial court file back to the trial court. I decline that request.
7. I direct that the appeal be fast tracked by the following steps being taken-;
 - a. Mr. Kaburu to file and serve any supplementary record of appeal and submissions within 21 days from today.
 - b. Mention on 29/7/2021 for further orders.

DATED SIGNED AND DELIVERED AT MERU VIA MICROSOFT TEAMS THIS 9TH DAY OF JUNE 2021

Patrick J O Otieno

Judge