

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

MISCELLANEOUS CIVIL APPLICATION NO.18 OF 2020

SAMUEL M T GITHINJI.....APPLICANT

VERSUS

FRANCIS WACHIRA GITHAE

(T/A LARGE POWER AND CONTROLS).....RESPONDENT

RULING

1. This ruling concerns the **notice of motion herein dated 21/08/2020**. The application seeks, firstly, leave to appeal out of time under **section 79G** of the *Civil Procedure Act* and, secondly, stay of execution of decree and all consequential orders under **Order 42, Rule 6** of the *Civil Procedure Rules, 2010*.

2. What is sought to be appealed against is not stated on the face of the application; however, from the supporting affidavit and a draft memorandum of appeal annexed thereto, what is sought to be appealed against is the **ruling and order of the lower court delivered on 29/08/2019** by which that court refused an application by the Applicant to set aside *ex parte* proceedings of 07/11/2018 and *ex parte* judgment delivered on 28/11/2018.

3. In the course of arguments on 17/05/2021 learned counsel for the Applicant stated that there had been a previous application in this court similar to the present one vide **Nanyuki HC Misc Civil Application No 17 of 2020** which counsel stated was “*abandoned and dismissed*”. Learned counsel for the Respondent stated that he was not aware of any such application as neither he nor the Respondent personally was served with such application.

4. Before commencing to write this ruling, I directed the **High Court Civil Registry** to avail to me the alleged Nanyuki HC Misc Civil Application No 17 of 2020 between the parties. The file bearing that number is not in the names of the parties herein.

5. The only other file bearing the names of these same parties that the registry staff found was **Nanyuki HC Civil Appeal No 15 of 2019 (Samuel M T Githinji –vs- Francis Wachira Githae – t/a Large Power & Controls)**. The appeal is against –

“...Ruling in Nanyuki Chief Magistrate’s Court Civil Case No 3 of 2018 by learned...L Mutai (CM) on 29/08/2019”.

That is the very same ruling/order that the Applicant in the present application is seeking leave to appeal against!

6. It means therefore, that there is already an appeal pending (filed on 27/09/2019) which the Applicant should be prosecuting instead of filing useless applications. That appeal was filed through **M/s. G M Wanjohi & Co., Advocates**, the same advocates who filed the present application on 01/09/2020!

7. Needless to say, the present application is misconceived and an abuse of the process of the court. It is hereby dismissed with costs to the Respondent. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 2ND DAY OF JUNE 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 3RD DAY OF JUNE 2021