



**Karanja v Migiro & another (Civil Appeal E168 of 2023)  
[2025] KEHC 13768 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13768 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E168 OF 2023  
JM NANG'EA, J  
OCTOBER 1, 2025**

**BETWEEN**

**CATHERINE WANJIRU KARANJA ..... APPELLANT**

**AND**

**WYCLIFFE MIGIRO ..... 1<sup>ST</sup> RESPONDENT**

**GEOFFREY MIGIRO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Respondents in this Appeal bring a Notice of Motion dated 5<sup>th</sup> February 2024 praying for the following reliefs;
  1. That the instant Appeal be declared as compromised and consequently be struck out summarily.
  2. That pending hearing of the Appeal, the Appellant and her Advocates on record Messrs Wairimu Gathii Advocates LLP be jointly and severally ordered to refund the decretal sum paid or alternatively, the judgment sum be deposited in an interest accruing joint account held by both Counsels herein.(sic)
  3. That costs of the application be awarded to the Respondent/Applicant.
2. The Respondents' advocate (Mark Ng'ang'a Githiru) swore an affidavit in support of the Motion. He avers that this appeal follows the lower court's judgement in Nakuru CMCC No. E874 of 2022 entered on 27/6/2023 in favour of the Appellant. On 3/7/2023 the Appellant's Advocates served the Respondents' Advocates with their proposed Bill of Costs. The latter Advocates reverted by letter dated 18<sup>th</sup> July 2023 giving their opinion on the correct costs while also communicating that the Respondents' insurers requested for time to make good the judgement debt.



3. According to the Respondents' Advocate, the Appellant appeared impatient and by email dated 2<sup>nd</sup> August 2023 her Advocates demanded payment of the decretal sum in 2 days failure to which they would levy execution. The Appellant did in fact carry out the threat by instructing Auctioneers on 4<sup>th</sup> August 2023 to execute the lower court's decree when the payment was not forthcoming.
4. Counsel further avers that in the meantime the Respondents' Insurers remitted a total sum of Kshs. 1,068,232.50 on 18<sup>th</sup> August 2023 to the Appellant's Advocates in full satisfaction of the judgement debt. To their shock, however, on 30<sup>th</sup> August 2023 the Respondents' Advocates received a Memorandum of Appeal dated 10/7/2023 from the Appellant's Advocates. The Respondents lament that the Appellant unfairly and dishonestly demanded for satisfaction of the decree while knowing that she had filed an appeal which was not served until the decretal sum was received.
5. The Respondents' Advocate continues to depose that they wrote a protest letter to the Appellant's Advocates demanding refund of the paid decretal sum if the Appeal would proceed. The Appellant is said to have responded that she would neither make refund nor deposit the sum in a joint bank account of the parties' advocates.
6. The court is told that the Respondents have filed a Cross Appeal and would be prejudiced if no security for costs is deposited. It is suggested that the decretal sum paid out to the Appellant be refunded or alternatively, deposited in a joint interest earning bank account in the names of Counsel for the parties.
7. The Appellant opposes the application vide her affidavit in reply. On advice of her Advocates, she terms the application as misconceived, frivolous and an abuse of the court process. The Appellant avers that she cannot surrender the decretal sum there being no order varying or setting aside the decree. The Application is also attacked as belated for the reason that it was filed "more than 5 months down the line" in an attempt to force her to withdraw her appeal.
8. According to the Appellant, there is nothing that prevent executing a judgement event when an appeal is lodged.
9. The Appellant further asserts that she runs a business and would be in a position to refund the decretal sum if ordered in the appeal. For these reasons inter alia she wants the application to be dismissed.
10. Learned Counsel for the parties filed Written Submissions which I have perused against the rival affidavit evidence and the record. The Respondents argue that the Appeal is now moot, the full decretal sum having been paid out. Reliance is placed inter alia upon the Supreme Court's decision in Application No. E051 of 2023 pitting the National Land Commission against Prof. Tom Ojienda & Associates & 2 Others and CA CA No. E003 of 2023 (The National Assembly and Another vs Okiya Omtatah Okoiti & 55 Others).
11. The cited decisions espouse the doctrine of mootness in litigation. I must state at the outset that the cited Supreme Court decision is not relevant herein as the apex court declined to delve into the merits of the dispute therein on the ground that there was no appeal before the court that could be said to have been overtaken by events. The Court of Appeal in the National Assembly supra restated the law regarding the doctrine of mootness thus:-

“The law of mootness addresses the issue whether events, subsequent to the filing of a suit or appeal have eliminated the controversy between the parties. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance there is no actual substantial relief which a litigant would be entitled to, and which would be negated by dismissal of a case



or appeal. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness, save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, bar and public; or when the case is capable of repetition yet evading judicial review.”

12. This court has also had occasion to comment on this important legal principle John Mativo J (as he then was) had this to say in *Daniel Kaminja & 3 Others vs The County Government of Nairobi* also cited by the Respondents;

“A matter is moot if further legal proceedings with regard to it can have no effect or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises where there is no longer an actual controversy between the parties to a case and any ruling by the court would have no actual practical impact.”

13. The Appellant makes no reference to the doctrine of mootness in her submissions. She instead submits through her advocates that the appeal is arguable citing inter alia case law in *Tome & Another vs Attorney General & 2 Others (2021) KECA 150 (KLR)*. Counsel urge that striking out the appeal as prayed by the Respondents is a draconian measure that may not be resorted to in the circumstance of this case.

14. The issues for determination are two fold:-

- a. Whether this matter is moot.
- b. The orders commending themselves to the court in the circumstances obtaining herein.

15. There is no dispute that an appeal has been filed vide Memorandum of Appeal dated 10<sup>th</sup> July 2023 lodged on 21/7/2023. The Memorandum of Appeal was served on the Respondents on 30/8/2023 after the Appellant received payment of the decretal sum on 18/8/2023 through her advocates. Is the Appeal moot in the circumstances?

16. I have perused the Memorandum of Appeal. The Appellant challenges the quantum of general and special damages assessed and awarded to her by the trial court. The Respondents’ Cross Appeal faults the trial court for granting the Appellant excessive damages.

17. There is no doubt that the Appellant unfairly stole the match on the Respondents by giving the impression that she was satisfied with the lower court’s judgement and obtaining satisfaction thereof, and at the same time lodged the appeal. She does not therefore come to the court of equity with clean hands.

18. The above observation notwithstanding, I don’t think that the appeal is moot. The Appellant protests in the appeal that the damages awarded to her are on the lower side and further contends that other pleaded claims were not considered and granted by the lower court. There are therefore issues in controversy that are sought to be determined in the appeal. Payment of the decretal sum to a judgement creditor does not obviate an appeal. The Respondents’ Submissions on the principle of the mootness are distinguishable in the circumstances.

19. In the result, the Application dated 5<sup>th</sup> February 2024 is dismissed.

20. Considering that the Respondents have lodged a Cross Appeal, the Appellant is ordered to deposit into court half of the decretal sum paid out to her within 30 days from the date hereof. In default



her appeal shall automatically stand dismissed for mootness, having received satisfaction of the lower court's decree. The costs of this application shall abide the Appeal and Cross Appeal.

21. Ruling accordingly.

**RULING DELIVERED VIRTUALLY AT NAKURU THIS 1<sup>ST</sup> DAY OCTOBER, 2025.**

**J. M. NANG'EA, JUDGE.**

In the presence of:-

Appellant's Advocate, Ms Wairimu

Respondents' Advocate, Ms Mwashu for Mr. Githiru

Court Assistant (Jeniffer)

**J. M. NANG'EA, JUDGE.**

