



D. M. Mutinda & Company Advocates v Victory Faith Ministries (Miscellaneous Application 135 of 2018) [2026] KEHC 946 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS APPLICATION 135 OF 2018
RC RUTTO, J
JANUARY 29, 2026**

BETWEEN

D. M. MUTINDA & COMPANY ADVOCATES APPLICANT

AND

VICTORY FAITH MINISTRIES RESPONDENT

RULING

1. By Notice of Motion dated 4th February 2025, the applicant invoked the provisions of Article 10 of *the Constitution* and order 42 of the Civil Procedure Rules seeking the following orders:
 1. That this Honourable Court be pleased to vacate the orders dated 13th June 2023 and issued on 23rd June 2023;
 2. That this Honourable Court be pleased to order Equity Bank Ltd, EPZ Branch to release the decretal sum held under account number 1XXXXXXXXX256 to the applicant advocate Daniel Musyoka Mutinda;
 3. That cost of the instant application be borne by the respondent herein.
2. The application is supported by the grounds on the body of the Motion together with the supporting affidavit of Daniel Musyoka Mutinda, the managing partner of the applicant firm. He deposed that on 13th June 2023, the court granted a conditional stay of execution of the decree dated 20th April 2023. The condition was that the respondent deposits the decretal sum of Kshs. 202,889.00, being judgment sum plus costs, in a joint interest earning account, within 45 days, failing which the stay orders would lapse.
3. The decretal sum was subsequently, deposited at Equity Bank Limited EPZ Branch, in the joint names of the parties' advocates; Daniel Musyoka Mutinda & Company Advocates and Masore Nyang'au & Company Advocates under account number 1XXXXXXXXX256. The applicant avers that since the



issuance of the stay orders, approximately 20 months ago, the respondent has neither filed its record of appeal nor sought proceedings, judgment or a certificate of delay. He argued that this has denied the applicant the right to enjoy the fruits of its judgment.

4. The applicant further asserted that he is financially cable of refunding the respondent the decretal sum, should the respondent succeed on appeal, and urged the court to allow the application in the interest of justice.
5. The respondent opposed the application. It filed grounds of opposition dated 24th February 2025 urging this court to dismiss the application on the following grounds: the court lacked the jurisdiction to vacate orders that had already been complied with; the matter was pending before the Court of Appeal; the respondent has never been furnished with the proceedings and judgment to enable it file its record of appeal and prosecute its appeal; it was just and equitable that the applicant awaits the outcome of the appeal; and the applicant suffered no prejudice as the amount in the account continued to accrue interest.
6. The application was disposed of by way of written submissions. The applicant in his submissions dated 18th March 2025 argued that the respondent had violated rule 84 of the Court of Appeal Rules, by failing to request the proceedings and judgment and by failing to file its record of appeal within 60 days. It further noted that the respondent had not obtained a certificate of delay. On this basis, the applicant urged the court to vacate the stay orders and release the decretal sum.
7. In submissions dated 25th March 2025 the respondent reiterated that once a notice of appeal, has been filed, this court was vested of jurisdiction. It argued that the applicant's remedy lay in appealing against the stay orders under order 42, rule 6(1) of the Civil Procedure Rules. It prayed that the application be dismissed with costs.
8. The key issue for determination is whether this court has jurisdiction to vacate the stay orders issued on 13th June 2023 and release the decretal sum to the applicant.
9. I have carefully considered the application and the grounds of opposition, the annexures and the applicable law. The applicant seeks to vacate the stay orders previously issued and to have the decretal sum released. The relevant orders were as follows:
 - “ 1. That stay of execution of decree emanating from the court's judgment delivered in this case on the 20th April 2023, be and is hereby granted pending the hearing and determination of the appeal preferred against the said judgment on condition that the applicant/client do deposit the decretal sum in a joint interest earning account held in commercial bank (sic) the names of both counsels for the client and the respondent/advocate within 45 days.
 2. That in default thereof this application will be deemed to have been dismissed and the advocate/respondent will be at liberty to execute.
 3. That mention on 18/10/2023.”
10. It is evident from these orders that the stay of execution was conditional upon the respondent depositing the decretal sum in a joint interest-earning account within 45 days and was subject to hearing and determination of the appeal preferred against the said judgment. The applicant has confirmed compliance, noting that the sum of Kshs.202,889.00 was duly deposited at Equity Bank Limited, EPZ Branch, in the joint names of the parties' advocates under account number 1XXXXXXXXX256.



11. The applicant is now aggrieved by the subsistence of those stay orders, citing delay by the respondent in prosecuting its appeal. However, Order 42 Rule 6(1) of the Civil Procedure Rules expressly provides that any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside. This court, having issued conditional stay orders, that have been complied with, is now functus officio and cannot revisit them.
12. The applicant's reliance on the respondent's alleged laches is misplaced. Delay in prosecuting an appeal was not a condition precedent to the grant of stay orders. Even if it were, the proper forum to address such procedural defaults is the Court of Appeal, not this court. To vacate the stay orders at this stage would amount to acting per incuriam.
13. The applicant is aware of the procedural safeguards under the Court of Appeal Rules, including remedies available where an appeal is not prosecuted within the prescribed timelines. Those remedies must be pursued before the appellate court. This court cannot arrogate to itself jurisdiction it does not possess.
14. In light of the foregoing, I find that the Notice of Motion dated 4th February 2025 is devoid of merit. This court lacks jurisdiction to grant the orders sought.
15. Accordingly, the application is dismissed in its entirety with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 29TH DAY OF JANUARY 2026.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant

