



REPUBLIC OF KENYA



KENYA LAW
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**Kurumah & 2 others v Malonza (Civil Appeal 181 of 2021)
[2026] KEHC 1786 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1786 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL 181 OF 2021
RC RUTTO, J
FEBRUARY 12, 2026**

BETWEEN

MICHAEL KAMAU KURUMAH 1ST APPELLANT

AUSTINE MUTARA VUNZA 2ND APPELLANT

DOMINIC MWANGI THUO 3RD APPELLANT

AND

AGNES MWIKALI MALONZA RESPONDENT

RULING

1. By a Notice of Motion application dated 15th October 2024, the applicant seeks orders that the sum of Ksh.3,832,265 guaranteed by Family Bank on 19th October 2022 be released to her through her advocates M/S Mulyungi & Mulyungi Associates Advocates.
2. The applicant contends that the Replying affidavit filed by the appellants in response to this application should be expunged from the record as it was filed out of time without leave of the court to extend time.
3. It is further, the applicant's case that the appellants have demonstrated indolence in prosecuting this appeal having failed to comply with this court orders issued on 6th February 2024. She therefore urges that the bank guarantee furnished be utilized in her favour.
4. The applicant argues that the reasons advanced by the appellants for non-compliance with the court's orders are untenable. She submits that the appellants' claim of not having been provided with copies of the proceedings, judgement and decree is the same excuse previously raised before the Honourable Judges on 16th June 2023 and 20th September 2023. Despite this the appellant made no effort to extract the orders and bring them to the attention of the Deputy Registrar. Consequently, the court set clear timelines and consequences.



5. The applicant further contends that the three letters dated 7th February 2023, 17th March 2023 and 4th March 2025 which the appellants rely on to demonstrate follow -up, do not relate to the primary suit. Instead, they were addressed to Mavoko Law Courts whereas the appeal emanated from Machakos Law Courts.
6. The applicant emphasizes that it is imperative to enforce court orders as courts do not issue orders in vain.
7. The appellants on the other hand through their replying affidavit dated 14th March 2025 and written submissions dated 1st October 2025 reiterate that they requested but have not yet received copies of the proceedings, judgment and decree to enable them to file a Record of Appeal.
8. They argue that the registry's refusal and/or decline and/or error by the registry at Milimani is occasioning great injustice to them as they are desirous to prosecute this appeal.
9. They submit that under Article 159 (2) (d) of *the Constitution* of Kenya, 2010 which enjoin the court to administer justice without undue regard to procedural technicalities.
10. They further submit that this court has not issued directions and therefore dismissing the appeal would contravene the Civil Procedure Rules. They contend that they will suffer irreparable harm and loss and their appeal rendered nugatory if an order dismissing the appeal is issued. It is their case that the appeal raises triable issues which ought to be determined on merit rather than on procedural technicalities. They also invoke their Article 50(1) of *the Constitution*, asserting their rights to a fair hearing. Accordingly, they urge that the appeal be heard and determined on its merit.

Analysis and Determination

11. I have carefully considered the application and the affidavit in support of and in opposition to the application.
12. From the material before me, it is evident that this appeal arises from the Judgment in Machakos CMCC No. 145 of 2020 which was in favour of the applicant. Being dissatisfied and aggrieved by the said judgment the appellants preferred an appeal being Machakos HCCA E181 of 2021. Pending the hearing and determination of the appeal the appellants furnished a bank guarantee for the decretal sum of Kshs. 3,832,226.
13. To date, the appellants have not filed their record of appeal. This omission has prompted the applicant to seek orders that this guarantee be released to them.
14. Under Order 42 Rule 13 (4) of the Civil Procedure Rules, a judge shall not permit an appeal to proceed to hearing unless the record of appeal has been duly filed.
15. The trial court judgment was delivered on 21st October 2021, and the appellants filed a Memorandum of Appeal dated 2nd November 2021.
16. Subsequently, on 6th February 2024, Olel J issued the following order;

“That the appellant is granted 60 days with effect from today to file record of appeal and submissions in default the stay orders issued on 26/9/2022 will stand varied and set aside and the Respondent will be at liberty to execute.”
17. Although the appellants assert their desire to prosecute the appeal, I am not persuaded that they have taken diligent steps to obtain the decree, judgment and proceedings from the trial court. They



allege that refusal and/or decline and/or error by the registry at Milimani registry has occasioned great injustice to them as they are desirous to prosecute this appeal. Yet, in their letters dated 7th February 2023 and 4th March 2025 they sought proceedings, judgment and decree, in respect of CMCC 145 of 2020-Mavoko. This is perplexing, given that in their own replying affidavit, at paragraph 4, they acknowledged that the appeal arises from Machakos CMCC No 145 of 2020. They averred that “the appeal arises from the Judgment in Machakos CMCC No. 145 of 2020 and being aggrieved by the said judgment the Appellants preferred an appeal being Machakos HCCA E181 of 2021.”

18. By directing correspondence to the Milimani Registry and to Mavoko Law Courts, the appellants have demonstrated a lack of seriousness in pursuing the requisite documents. This, coupled with their failure to comply with the clear timelines set by the court on 6th February 2024, underscores their indolence.
19. In the circumstances, I agree with the applicant that court orders are not issued in vain. The appellants have failed to comply, and the consequences must follow. The upshot is that the application is allowed as prayed. Costs awarded to the applicants.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 12TH DAY OF FEBRUARY, 2026

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

