

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

MISCELLANEOUS CIVIL APPLICATION NO. E047 OF 2024

STEPHEN WANYOIKE WAWERU.....
APPLICANT

VERSUS

MARY WAMBUI MUNGAI &
JOHN MUNGAI NGOHO DENZEL GITAU
WAMBUI.....RESPONDEN
TS

R U L I N G

Brief facts

1. The application dated 19th December 2025 seeks for orders of reinstatement of the application dated 23rd April 2024 dismissed on 18th November 2024 for noncompliance. The applicant further seeks for orders of enlargement of time for him to comply with the court's orders.
2. The respondents opposed the application and filed Grounds of Opposition dated 6th February 2026.

Applicant's Case

3. The applicant states that the court dismissed his application dated 23rd April 2024 for non compliance with the court's directions dated

26th April 2024 within time. The applicant states that the failure to comply was neither deliberate nor contumacious but was occasioned by circumstances beyond his control as his bank accounts were frozen. The applicant further states that he has been embroiled in a shareholders' dispute which significantly affected management decisions, authorization of payments and operational continuity.

4. The applicant argues that the dismissal of his application has occasioned grave prejudice to him while no prejudice will be suffered by the respondents that cannot be adequately compensated by an award of costs. The applicant further states that it is a settled principle of law that disputes ought to be determined on their merits and that a party should not be condemned unheard.

The Respondents' Case

5. The respondents state that there was a declaratory suit Civil Case 100 of 2024 where judgment was rendered but no appeal was preferred. Thus execution already began for the application for stay was dismissed, therefore within their rights to execute. The respondents state that the current application seeks to reinstate a dismissed application filed before execution which has been

overtaken by events as opposed to filing a fresh application.

6. The respondents aver that the supporting affidavit is based on hearsay evidence as opposed to a legal/financial representation of Directline Assurance Ltd and is therefore defective ab initio.
7. The respondents state that stay was granted on condition that the applicant deposit Kshs. 3,009,328/- and to date the said sum has never been deposited. The respondents further state that there is a decree nisi to the applicant's insurer bank account in Civil suit No. E158 of 2022 Gatundu for a sum **of** Kshs. 203,550/-. The respondents further state that granting stay will be similar to applying stay pending an appeal however no appeal exists. Thus the court should disallow the said application.
8. The respondents aver that the applicant has not approached the court with clean hands as there has been an attempt to settle the judgment vide a consent but the applicant's advocates have failed to sign the consent.
9. Parties elected not to file written submissions.

The Law

Whether the application has merit

10. The applicant filed an application dated 23rd April 2024 for stay of execution of the judgment and decree issued by the Chief Magistrate's Court in Thika in CMCC

No. 158 of 2022 delivered on 27th February 2024 and judgment and decree issued by the Chief Magistrate's Court in Gatundu in CMCC No. 158 of 2022 delivered on 27th February 2024. The applicant further sought for extension of time to file an appeal in the instant court. The court granted interim stay of execution on condition that the applicant deposit the decretal sum in court within 30 days but to date the same has

never being complied with. The court further directed that in the event the decretal sum was not deposited, the stay orders stood vacated. It is trite law that a court order is not a mere suggestion or opinion or a point of view.

11. In the case of **Teachers Service Commission vs Kenya National Union Teachers & 2 Others [2013] eKLR** the court held that:-

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door.

12. The court record shows that applicant did not comply with the orders made on 30/4/2024 to deposit of the decretal amount in court within the period of 30 days as directed. His reasons were that his accounts were frozen

during the said period. This reason does not provide a sufficient cause for non-compliance. As it stands, the court gave a second chance to the applicant to deposit the monies in the next 14 days. He continued enjoying stay of execution orders without complying with the orders of providing security. It is not in doubt that the applicant has exhibited conduct which shows laxity and lack of commitment in his undertakings. This conduct, without a reasonable explanation only demonstrates an indolent litigant not keen in fulfilling his obligations but wanting to ride on the rights of the respondent. That

notwithstanding, the respondents have demonstrated that there are already orders of decree nisi to the applicant's insurer bank in respect of execution of decree in Civil Case No. E158/2022 Gatundu for Kshs. 203,550/- in respect of the same judgment. Thus, the application has already been overtaken by events.

13. Accordingly, it is my considered view that the application dated 19th December 2025 is incompetent and is hereby struck out with costs to the respondents.

14. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 23RD DAY OF APRIL 2026.***

F. MUCHEMI

JUDGE