



REPUBLIC OF KENYA



Yakub v Wesonga (Appeal E006 of 2024) [2025] KEELC 1018 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEELC 1018 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
APPEAL E006 OF 2024
LL NAIKUNI, J
FEBRUARY 28, 2025

BETWEEN

SIDIQUE HARRON YAKUB APPELLANT

AND

ALEX MAINDI WESONGA RESPONDENT

RULING

I. Introduction

1. This Ruling is in relation to an issue whereby the Honourable Court's attention was drawn on 10th February, 2025 by Mr. Tindika Advocate for the Respondent. Essentially, it was on a disobedience of a Court order. The Learned Counsel asserted that despite of the Court having delivered a ruling on 8th October, 2024, the Respondent had outrightly breached the said orders and instead had now filed written submissions ostensibly expecting the Court to deliver a Judgement on a filed appeal.
2. In order to sustain the principle of natural Justice, the Honourable Court directed that the Appellant be served with a hearing notice for 14th February, 2025. Indeed, all the parties appear and made their respective brief submissions. According to the Learned Counsel for the Respondent, the Appellant from the ruling was granted 30 days to deposit the total decretal sum being a sum of Kenya Shillings Six Forty-Seven Thousand Three Eighty-Four Hundred and fifty Cents (Kshs. 647,384.50/-) in an Interest earning Escrow bank account at a reputable Commercial institution to be held in the names of the Law Firms of Messrs. Tindika & Company Advocates and Wangila & Wangila Company Advocates a condition which the Appellant.
3. Further, from the said Ruling, the Honourable Court opined itself that failure to comply with the Pre – conditions set out herein the Notice of Motion application dated 23rd May, 2024 shall automatically stand dismissed without further recourse to this Honourable Court. In the given circumstance, having failed to comply then aforestated application stood dismissed and in essence there was no appeal for the Court to consider any more.



4. On her part, M/s. Seif Advocate for the Appellant admitted that the Appellant had flaunted on part of the Pre – condition but had filed an appeal as directed by this Court. According to the Learned Counsel stated that the reason for failure to have deposited the decretal sum in the joint account as ordered was that the Appellant had been taken ill abroad – in India for medical case and attention.
5. On a quick rejoinder, Mr. Tindika Advocate argued that the Honourable Court to find that the reasons advanced by the Appellant in not fulfilling the pre – conditions for the grant of stay of execution pending appeal as prayed for in the Notice of Motion application dated 23rd May, 2024 not convincing to the court. He contended that, all these were arguments advanced orally and from the bar as there was no formal application made to that effect. He averred that Court order ought to be obeyed at all costs. In the given circumstances, he reiterated that there was no appeal.

II. Analysis & Determination.

6. I have keenly assessed all the submissions made by the Learned Counsels and the records on the matter at hand. Indeed, the main substratum of the subject matter revolves around the Ruling delivered on 8th October, 2024 by this Honourable Court. Specifically, I have been compelled to re – produce the ratio and terms of the said Ruling. These were as follows:-
 - a. That the Notice of Motion application dated 23rd May, 2024 be and is hereby found to have merit hence hereby allowed in its entirety upon fulfillment of the Pre – Conditions set out herein.
 - b. That an order made that the Appellant to deposit the total decretal sum being a sum of Kenya Shillings Six Forty-Seven Thousand Three Eighty-Four Hundred and fifty Cents (Kshs. 647,384.50/-) in an Interest earning Escrow bank account at a reputable Commercial institution to be held in the names of the Law Firms of Messrs. Tindika & Company Advocates and Wangila & Wangila Company Advocates Within The Next Thirty (30) Days from the date of the delivery of this Ruling.
 - c. That the Memorandum of Appeal herein attached dated 23rd May, 2024 be and is herein admitted after payment of the requisite filing fees and the appeal be filed within (15) fifteen days from the date of this ruling.
 - d. That this Honourable Court do hereby issue an order to stay the execution of the ruling delivered on 5th April 2024 in BPRT/E214/2022 pending the hearing and determination of this appeal herein.
 - e. That the Applicant to file and serve a Record of Appeal within 45 days from the date of this Ruling and there be a mention of the matter on 11th December, 2024 for taking direction on the admission and disposal of the appeal under the Provision of Section 79B of the [Civil Procedure Act](#), Cap. 21; Order 42 Rules 11, 13 and 16 of the Civil Procedure Rules, 2010.
 - f. That subsequently, all facts remaining constant reserves to deliver the Judgement on 19th February, 2025.
 - g. That failure to comply with any these Pre – Conditions set out herein the Notice of Motion application dated 23rd may, 2024 shall automatically stand dismissed without further recourse to this Honourable Court.

That each party shall their own costs.



7. Undoubtedly, the afore – stated orders were clear, plain and pre – conditional in nature. They are mandatory from the face value. Clearly, this Honourable Court’s order still remains in force. Hence, I find no difficulty in finding that the Appellant was obliged to comply with the said decision. Paradoxically, the Appellant has admitted that they were only able to fulfil part of the pre – Condition by filing the appeal but not depositing the decretal sum as directed. According to the Learned Counsel, the Appellant failed to deposit the amount in the escrow account as the Appellant travelled abroad to seek for medical care and attention. Certainly, I fully concur with the Learned Counsel for the Respondent this reason was not convincing. The Appellant never moved this Court formally seeking to be accommodated or the orders to be adjusted through a review or set aside or variation.
8. Based on the fore going, it is essential for the maintenance of the rule of law and order that the authority and the dignity of Courts is upheld at all times. It is trite law that Court orders are not a formality nor cosmetic. They are to be obeyed at all times in order to maintain the rule of law and good order. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.
9. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilized societies from those applying the law of the jungle. A Court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with. I shudder to think of the place of our judicial system if parties are left to freely decide what court orders to obey and which ones to ignore. Parties must realize that once they are brought to court they are subject to the jurisdiction of the Court. Under Article 159(1) of *the Constitution*, Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under *the Constitution*. In exercising judicial authority the Courts and Tribunals are, inter alia, to be guided by the principle that the purpose and principles of *the Constitution* shall be protected and promoted. Under Article 10(1) of *the Constitution* the national values and principles of governance in the Article bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets *the Constitution*; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. Under clause (2)(a) of the same Article the national values and principles of governance include the rule of law.
10. The only remedy should one feel aggrieved by a Court order, for them come back to Court for them to be reviewed or varied or set aside. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors. The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.
11. Willful and flagrant disobedience of court orders undermines the authority and dignity of the Courts and must be dealt with firmly so that the Court’s authority is not brought into disrepute.

III. The findings.

12. For these reasons advanced above, the Honourable Court proceeds to make the following orders:-
 - a. That the filed Appeal upon failure to comply with the conditions given be and is hereby by dismissed.



b. That the Appellant to bear the costs of this motion.

It Is So Ordered Accordingly.

**RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL, MEANS SIGNED
AND DATED AT MOMBASA THIS 28TH DAY OF FEBRUARY 2025.**

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**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT AT MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. M/s. Seif Advocate holding brief for Mr. Wangila Advocate for the Appellant.
- c. Mr. Tindika Advocate for the Respondent.

