



Systemedia Technologies Limited v Matheka & 3 others (Environment and Land Appeal 21 of 2022) [2024] KEELC 788 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 788 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 21 OF 2022
EK WABWOTO, J
FEBRUARY 15, 2024**

BETWEEN

SYSTEMEDIA TECHNOLOGIES LIMITED APPELLANT

AND

GRACE MATHEKA 1ST RESPONDENT

GREAT RIFT VALLEY AUCTIONEERS 2ND RESPONDENT

UPSTATE AUCTIONEERS 3RD RESPONDENT

MORAN AUCTIONEERS 4TH RESPONDENT

RULING

1. This court in its ruling dated 30th November, 2023 directed that the sum of Kshs. 1,000,000/- that had been deposited in court by the Appellant be released to the 1st Respondent herein.
2. The 1st Respondent has now moved this court vide the application dated 15th January, 2024 seeking for the following orders.
 - i. Spent...
 - ii. That the Honourable court be pleased to release funds deposited in court's accounts by the Appellant to the 1st Respondent/Applicant's advocate on record Morara Ngisa & Co. Advocates to cover part of legal fees and the balance to go towards her children college fees.
 - iii. That the costs of this application be in the cause.
3. The application is supported by the affidavit sworn by Grace Matheka on 15th January, 2024 the 1st Respondent herein. It was deposed that no prejudice will be suffered by the Appellant if the funds are released to cover legal fees and children college fees.



4. The application was opposed by the Appellant vide a Replying Affidavit sworn by Geoffrey Mutua Munywoki a Director and Sales Marketing Manager of the Appellant's Company. It was deposed that the Advocates for the 1st Respondent were not a party to the lease agreement between the Appellant and the 1st Respondent and therefore, the money being accrued rent arrears should not be released to the Advocates for the 1st Respondent but the same should be personally released to the 1st Respondent. It was also averred that there is real likelihood that the 1st Respondent may unlawfully and illegally issue a fresh demand for the same amount from the Appellant especially considering the lease between the parties expired on 2nd November, 2019 and this will occasion prejudice upon the Appellant.
5. The Appellant also deposed that at no point during the subsistence of the lease between the parties did the Appellant ever pay rent through the 1st Respondent's Advocates, instead the rent was paid directly to the 1st Respondent in person and through her personal family bank account No. 014169079 Moi Avenue Branch. The money that has been deposited as accrued rent arrears cannot be released to the Advocate.
6. That the issue of children's college fees does not arise anywhere in this case. This was a purely landlord-tenant dispute and not a children's matter.
7. It was also contended that the citing of the repealed Children's Act, 2001 is not only ill-advised but also completely misguided. It was also contended that the Applicant has not availed any documentation to show that the college fees are needed urgently as alleged. The issue of college fees is a diversion tactic meant to mix up issues and mislead this Honourable Court. The Court was urged to dismiss the application.
8. Parties also filed written submissions in respect to the application which the court has duly considered.
9. The Court has considered the application together with the rival affidavits filed and the salient issue for determination herein is whether the application is merited to warrant the grant of the orders sought.
10. The Application seeks release of funds deposited in court's account by the Appellant in the sum of Kshs 1,000,000 to the 1st Respondent/Applicant's advocate to cover part of her legal fees and the balance to go towards her children college fees.
11. A party seeking release of funds in the manner sought by the 1st Respondent/Applicant must demonstrate to this court and provide sufficient reasons supported with sufficient evidence as to why the funds ought to be released. The said applicant must also ought to convince the court that no prejudice will be suffered by the either party should the said funds be released to the applicant.
12. In the instant application, the Appellant/1st Respondent in opposing the application argued that there is no factual or legal basis upon which the funds should be released to the 1st Respondent/Applicant's Advocate on record.
13. The Court has carefully perused the affidavit filed in support of the application and it is evidence that the applicant has not furnished this court with the relevant material information in form of the fee structure nor any other evidence either documentary or otherwise to enable this court grant the orders sought.
14. In view of the foregoing, this court finds that the application dated 15th January, 2024 is unmerited and will proceed to dismiss the same with no orders as to cost.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF FEBRUARY, 2024



E.K. WABWOTO

JUDGE

In the virtual presence of:

Mr. Morara for the Applicant.

Mr. Atonga for the Respondent.

Court Assistant: Caroline Nafuna.

