



REPUBLIC OF KENYA



East Africa Institute of Certified Studies Limited & 2 others v Mombasa Trade Centre Ltd (Civil Application E107 of 2023) [2024] KECA 233 (KLR) (8 March 2024) (Ruling)

Neutral citation: [2024] KECA 233 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E107 OF 2023
AK MURGOR, KI LAIBUTA & GV ODUNGA, JJA
MARCH 8, 2024**

BETWEEN

**EAST AFRICA INSTITUTE OF CERTIFIED STUDIES
LIMITED 1ST APPLICANT
DANIEL WAKABA MACHARIA 2ND APPLICANT
SERAH WANARU MACHARIA 3RD APPLICANT**

AND

MOMBASA TRADE CENTRE LTD RESPONDENT

(Being an application for stay of execution pending delivery of ruling of the applicants' Motion for stay of execution pending appeal by this Court scheduled for delivery on 24th April 2024)

RULING

1. By an application dated 15th February 2024 brought pursuant to rule 5(2) of the *Court of Appeal Rules*, the applicants, East Africa Institute of Certified Studies Limited, Daniel Wakaba Macharia and Serah Wanaru Macharia, seek orders that: (i) there be a stay of execution of the decree in Mombasa ELC No.104 of 2021 pending delivery of the ruling on the applicants Notice of Motion dated 29th September 2023 for stay of execution pending appeal to this Court, and which is scheduled for delivery on 24th April 2024; and (ii) that the costs of this application be in the cause.
2. The Notice is brought on the grounds set out on its face and on the annexed affidavit in support sworn by the 2nd applicant in which it was contended that the applicants filed an application seeking stay of execution of the decree in Mombasa ELC No. 104 of 2021 on 29th September 2023; that the application was heard by the Court on 6th December 2023; and that delivery of the ruling on the application is scheduled for 24th April 2024. It was averred that the costs in the court below were taxed on 6th December 2023 and, subsequently, a Certificate of Taxation issued; that, by a letter dated 25th



January 2024 from the respondent's, a Draft Decree was sent to the Appellant's Advocates who were given three (3) days to approve the same; that the Decree has been signed by the Deputy Registrar in the Court below, and that the respondent has commenced execution; and that, unless stay of execution is granted pending delivery of this Court's ruling on the main application on 24th April 2024, the applicants are likely to suffer great prejudice, which will render the application for Stay of execution dated 29th September 2023 and the intended Appeal a mere academic exercise.

3. In a replying affidavit sworn on 23rd February 2024, Abdulkader Mohamedali Sale Mohamed, the respondent's accountant, opposes the application and deposes that this Court did not grant the applicants any interim order of stay of execution of the Decree sought; that the applicants conduct in filing similar applications amounts to gross abuse of the Court process; that the Decree appealed from is a money decree; that the respondent is financially capable of refunding the Decretal sum in the unlikely event the appeal succeeds; and that, in the circumstances, the appeal will not be rendered nugatory.
4. During virtual hearing, learned counsel for the applicants, Mr. Keyonzo, reiterated the contents of the application and the affidavit in support thereof, and prayed for an order to maintain the status quo.
5. In response, Mr. Mutubia, learned counsel for the respondent, opposed the application on the basis that it was an abuse of the court process, as the applicants ought to have sought an order of status quo at the time the application of 29th September 2023 was heard.
6. We have noted that this application seeks to stay execution of the decree pending delivery of the Ruling of this Court. At the time of filing the initial application, the respondent had not obtained the decree, but has since extracted it and is already executing the decree against the applicants. So as to ensure that the ruling is not rendered a mere academic exercise in futility, it is in the interest of justice that the order that best lends itself, having regard to the circumstances, is for the status quo between the parties as at today 5th March 2023 to be maintained pending delivery of the Ruling of this Court on the Notice of Motion dated 29th September 2023.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 8TH DAY OF MARCH, 2024

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

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G. V. ODUNGA

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

