



REPUBLIC OF KENYA



**KENYA LAW**  
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**Munanu v Equity Bank (K) Limited (Civil Application  
E447 of 2021) [2022] KECA 791 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KECA 791 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E447 OF 2021  
DK MUSINGA, P, MSA MAKHANDIA & K M'INOTI, JJA  
JUNE 24, 2022**

**BETWEEN**

**BENARD MUNANU ..... APPLICANT**

**AND**

**EQUITY BANK (K) LIMITED ..... RESPONDENT**

*(Being an appeal from the Ruling of the Employment and Labour Relations Court  
(J. Rika, J.) delivered on 9th November 2021 in E.L.R.C. Claim No. 1295 of 2018.)*

**RULING**

1. The applicant's Notice of Motion dated 8<sup>th</sup> December 2021 brought under rule 5(2)(b) of this Court's Rules seeks, pending hearing and determination of an intended appeal, stay of the orders of Rika, J. in Employment and Labour Relations Court (ELRC) Claim No. 1295 of 2018 issued on 9<sup>th</sup> November 2021 where the learned judge set aside interim orders granted to the applicant on 3<sup>rd</sup> February 2020.
2. The applicant is a former employee of the respondent who had been granted a mortgage facility by the respondent. The mortgaged property is L.R NO. RUIRU/RUIRU EAST BLOCK 2/5859 (the suit property). The applicant had been advanced a sum of Kshs.5,300,000 at a staff rate of interest of 8% per annum but upon termination of his services, the rate of interest was charged at the commercial rate of 13% per annum.
3. The applicant defaulted in servicing his mortgage and the respondent served him with a redemption notice seeking a sum of Kshs.6,245,008.94, failing which the suit property would be sold by public auction.
4. The applicant filed a suit before the ELRC and a motion under certificate of urgency dated 31<sup>st</sup> January 2020 seeking injunctive orders to restrain the respondent from selling the suit property. The trial court



granted ex-parte injunctive orders on 3<sup>rd</sup> February 2020 and directed that the application be heard inter partes on 20<sup>th</sup> February 2020.

5. Subsequently, the respondent applied to set aside the injunctive orders and the ruling in respect of that application was set to be delivered on 30<sup>th</sup> November 2021 but the ruling was delivered earlier, on 9<sup>th</sup> November 2021 and emailed to the parties' advocates on 11<sup>th</sup> November 2021, although the applicant's learned counsel, Mr. E. N. Mugu, told the court that he did not receive the email but on 30<sup>th</sup> November 2021 he learnt that the ruling had been delivered earlier as indicated.
6. In the impugned ruling, the learned judge set aside the ex- parte interim orders, saying that such orders could not be extended except by consent, citing rule 17 of the Employment and Labour Relations Procedure Rules, 2016.
7. The applicant, being aggrieved by that ruling, filed a notice of appeal on 30<sup>th</sup> November 2021, on which his application for stay is grounded. The applicant argues that he has an arguable appeal and that if the orders sought are not granted, the intended appeal, if successful, shall be rendered nugatory because the applicant shall have sold the suit property.
8. The respondent, through its learned counsel, Miss Kibe, opposes the application. The respondent states that the impugned ruling having been delivered on 9<sup>th</sup> November 2021, the notice of appeal ought to have been filed within fourteen days from the date of delivery, which is 23<sup>rd</sup> November 2021, but instead it was filed on 30<sup>th</sup> November 2021. It was therefore filed outside the prescribed period without leave of the Court. She therefore urges us to find that the entire application is incompetent.
9. Secondly, the respondent submits that the intended appeal is not arguable; and that the applicant shall not suffer irreparable loss if the orders sought are not granted. Counsel submits that the applicant, having mortgaged the suit property, cannot argue that he has sentimental attachment to it.
10. In a brief rejoinder, Mr. Mugu submitted that he did not receive any email from the court notifying him about delivery of the ruling on 9<sup>th</sup> November 2021 instead of the date that was given by the Court, 30<sup>th</sup> November 2021; that he only learnt about the ruling on 30<sup>th</sup> November 2021 when he telephoned the Court Assistant; that on the same day he filed the notice of appeal.
11. Mr. Mugu otherwise conceded that the ruling having been delivered on 9<sup>th</sup> November 2021, the notice of appeal was filed outside the stipulated fourteen days' period under rule 75(2) of this Court's Rules.
12. We shall start by considering the propriety of the application and whether we have jurisdiction to consider the application before us. It is trite law that this Court's jurisdiction to grant an order of stay of execution or an injunction or stay of further proceedings arises only if there is a notice of appeal that has been lodged in accordance with rule 75 of this Court's Rules. See *Equity Bank Limited v West Link MBO Limited* [2013] eKLR.
13. The applicant's learned counsel conceded that the notice of appeal was filed outside the stipulated time frame without leave of the Court. The notice of appeal that was filed on 30<sup>th</sup> November 2021 reads: "NOTICE OF APPEAL FILED AGAINST THE RULING OF HON. JAMES RIKA DELIVERED ON 9/11/2021." If indeed the applicant's advocate did not receive the trial court's email of 11<sup>th</sup> November 2021 vide which the impugned ruling was transmitted, he ought to have filed an application for extension of time to file the notice of appeal and cite the aforesaid reason. He did not do so.
14. It follows, therefore, that there is no competent notice of appeal before us and for that reason we have no jurisdiction to grant the orders sought. That is sufficient to dispose of this application.



15. But even if we had jurisdiction to grant the orders, we do not think the applicant's intended appeal is arguable and would be rendered nugatory if the orders sought are not granted. The trial court rightly observed that the orders of preservation of the suit property are not matched with the prayers in the claim, which was for compensation for alleged unfair dismissal.
16. Secondly, the applicant did not allege that in the event that the suit property is sold and his appeal is successful the respondent will not be in a position to compensate him by way of damages. Rather, his contention is that he has sentimental attachment to the suit property and he will suffer irreparable loss.
17. We are unable to accept that submission. In the event that the suit property is wrongfully sold, the applicant's remedy would lie in damages. The fact that the suit property is the family home of the applicant is not a relevant consideration in an application such as the one before us.
18. In *John Nduati Kariuki T/A Jobester Merchants v National Bank Kenya Ltd* [2006] 1 E.A. 96 this Court held:

“A bank has no money of its own and it is axiomatic that it uses public funds to trade with. The applicant having obtained a large amount of those funds and had benefit of it, and having offered securities knowing fully well that they would be sold if he defaulted on the terms stated in the security documents, cannot be heard to say that the securities are unique and special to him as the bank is capable of refunding such sums as may be found due to the applicant, if any, and that capacity has not been challenged.”

We respectfully adopt that argument in this application.

19. All in all, this application is for dismissal for want of jurisdiction as earlier stated.

The applicant shall bear the costs of the application.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JUNE, 2022.**

**D. K. MUSINGA, (P)**

.....

**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

**K. M'INOTI**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

