



Karanja v Jane Wambui & Robert Kagunya Kamau (Suing as the Administrators of the Estate of Emma Wangui Kamau) & another (Civil Application E026 of 2022) [2022] KECA 1110 (KLR) (7 October 2022) (Ruling)

Neutral citation: [2022] KECA 1110 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E026 OF 2022
F SICHALE, JA
OCTOBER 7, 2022**

BETWEEN

BERNARD HERMAN KARANJA APPLICANT

AND

**JANE WAMBUI & ROBERT KAGUNYA KAMAU (SUING AS
THE ADMINISTRATORS OF THE ESTATE OF EMMA WANGUI
KAMAU) 1ST RESPONDENT
TELPOSTA PENSION SCHEME TRUSTEES 2ND RESPONDENT**

(An Application for Leave to file an Appeal against the judgment of the High Court of Kenya at Thika (Gacheru ,J) dated 8th October 2021 INELC No. 570 of 2017)

RULING

1. Before me is a motion dated 1st February 2022, brought pursuant to the provisions of Articles 40 (1), 159 (d), 164 (3) and 259 of the Constitution of Kenya, 2010, Sections 3, 3A, 3B of the Appellate Jurisdiction Act, Rule 5 (2) (b) and 103 of the Court of Appeal Rules and all enabling provisions of the Law in which Bernard Herman Karanja (the applicant herein) seeks the following orders:
 1. That this Honourable Court be pleased to admit this application for hearing and consideration before it.
 2. That this Honourable Court be pleased to hear and determine this application simultaneously with the following application presently before this Honourable Court:
 - a. Civil Application No. E423 of 2021 Bernard Herman Karanja v Jane Wambui and others



3. That this Honourable Court be pleased to grant the applicant leave to file an appeal from the decision of Honourable Lady Justice L. Gacheru delivered on 8th October 2021 by which she allowed the 1st respondent case in which orders for specific performance was allowed in which it compelled the applicant to facilitate the transfer of plot number Thika Municipality Block 9/301 to the 1st respondent.
 4. That pending the lodgment, hearing and determination of the appeal pursuant to prayer 3 above, this Honourable Court be pleased to issue an order of stay of execution of the judgment and decree issued by Honourable Lady Justice L. Gacheru delivered on October 8, 2021.
 5. That the costs of this application be in the appeal filed pursuant to prayer 3 above.
 6. That this Honourable Court be pleased to make any other order it deems meet and just in the circumstances”.
2. On 1st April, 2022, Mbogholi JA dismissed the applicant’s Application in C. Appl. No E423 of 2021, which the applicant had sought to be heard simultaneously with the current application that is now before me. It is instructive to note that the applicant is seeking essentially the same orders as those sought in Civil Application No. E423 of 2021, which was dismissed by Mbogholi, JA on 1st April 2022.
 3. What is now pending before this Court is a prayer for an order of stay of execution of the judgment and decree issued by Gacheru, J on October 8, 2021. This Court, sitting as a single Judge does not have jurisdiction to issue orders of stay of execution as is being sought. The applicant’s application is a gross abuse of the Court process.
 4. Accordingly, the applicant’s motion dated 1st February 2022, is without merit and the same is hereby dismissed in its entirety with costs to the respondents.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER, 2022.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

