



**Muravvej Holdings Ltd v Mwadzoya (Miscellaneous Application
E060 of 2021) [2023] KEELRC 2572 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2572 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E060 OF 2021**

**AK NZEI, J
OCTOBER 19, 2023**

BETWEEN

MURAVVEJ HOLDINGS LTD APPLICANT

AND

RASHID JUMA MWADZOYA RESPONDENT

RULING

1. On 28th April 2022, this Court delivered a Ruling pursuant to the Applicant’s Notice of Motion dated 29th November 2021, and made the following orders:-
 - a. the Applicant is hereby granted leave to appeal against the lower Court’s judgment delivered on 3rd September 2021 in Mombasa CM-ELRNo. 318 of 2018 out of time. A memorandum of appeal and record of appeal shall be filed contemporaneously within thirty days; failing which the leave herein granted shall automatically lapse.
 - b. there shall be a stay of execution of the lower Court’s decree pending hearing and determination of the intended appeal on condition that the entire decretal sum amounting to ksh. 357,978.58 is deposited in the Lower Court within fourteen days, failing which the stay herein granted shall automatically lapse.
 - c. costs of the application are awarded to the Respondent.”
2. On 21/2/2023, the Respondent filed a Notice of Motion dated 16/2/2023 seeking the following Order:-
 - a. that the sum of ksh. 357,979 deposited in Court on 13th May 2022 by the Applicant/ Respondent pursuant to this Honourable Court’s Ruling delivered on 28th April 2022 be released forthwith to the Firm of C.O. TOLO & CO. ADVOCATES representing Mr. Rashid Juma Mwadzoya/Applicant.



3. The application is premised on the Respondent/Applicant's supporting affidavit sworn on 16/2/2023. It is deponed in the said supporting affidavit that although the Applicant/Respondent deposited the decretal sum of ksh. 357,959 in Court as ordered by this Court on 13/5/2022, the Respondent/Applicant has todate not been served with either a memorandum of appeal or a record of appeal; and that the leave granted to the Applicant/Respondent has since lapsed.
4. The application was not opposed by the Applicant/Respondent. There are affidavits of service on record, filed on 3/3/2023 and 12/4/2023 respectively, demonstrating that the Notice of Motion and hearing notices thereon were duly served.
5. The orders of this Court dated 28/4/2022 are quite clear, and if they were not complied with, the remedies available to the Respondent are inbuilt in the said orders. The Respondent/Applicant is directed to make the present application in the trial Court. There is not shown to be an appeal filed in this Court. What was placed before this Court by the Applicant/Respondent was a Miscellaneous Application, on which this Court pronounced itself on 28/4/2023. In the circumstances, applications relating to execution of the lower Court's decree can only be made in the lower Court.
6. Consequently, the Notice of Motion dated 16/3/2023 is hereby struck off with no order as to costs.
7. As far as this Court is concerned, the Miscellaneous Cause herein is finalized; and it is so marked, save for the costs ordered on 28/4/2022.
8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 19TH OCTOBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

