



**Brothershirts Factory Limited v Olutawa (Appeal E004 of 2021)
[2022] KEELRC 3821 (KLR) (18 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3821 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E004 OF 2021
AN MWAURE, J
AUGUST 18, 2022**

BETWEEN
BROTHERSHIRTS FACTORY LIMITED CLAIMANT
AND
LILY OKUTONYI OLUTAWA RESPONDENT

RULING

1. The respondent/applicant (Lily Okutoyi) has approached the court vide a notice of motion dated July 18, 2022 whereby she prayed the sums held in a joint interest earning account of Mwaura Wachira Advocates and Charles Gomba & Company Advocates deposited in I&M Bank account number xxxxxxxxxxxxxxxx be released forthwith to the firm of Charles Gomba and Company Advocates.
2. She prays for costs of the applicant be provided for.

Respondent/Applicant Case

3. The respondent/applicant states that this honourable court granted a stay of execution of decree in CMEL No 416 at 2016 on January 1, 2021 on condition the decretal sum is deposited in court within 14 days.
4. The respondent/claimant further says that the parties agreed by consent to deposit the money in a joint interest earning account on February 9, 2021 pending outcome of the appeal.
5. The same was deposited in I&M Bank.
6. The respondent/claimant says the appeal was dismissed on June 23, 2022 with costs to the respondent/applicant.
7. The appellant/respondent claims he filed a notice of appeal to the Court of Appeal but the pleadings have not been availed to this court except the said notice dated June 30, 2022.



8. The respondent/applicant however says the appellant/respondent has refused to sign the forms for release of the decretal sums until their application for stay of execution is heard and determined by the Court of Appeal.
9. The honourable court granted a stay of execution on June 23, 2022 of 14 days and there is no any other information in the file that the stay of execution orders have been extended. The appellant/respondent is appealing against the High Court appeal but there is no memorandum of appeal in the court records.
10. The court noted that on July 29, 2022 Mr Oketch the advocate for the appellant/respondent requested the court 14 days to put a response to their application dated July 18, 2022 but is clear for about 10 days from 18th July to 29th July he had not bothered to respond.
11. This is a case where judgement was first delivered by the lower court on December 11, 2020. The decretal sum has been in a joint account since February 9, 2021. The court echoes the words of Justice Nzioki wa Makau in his judgement in this current appeal Appeal No E004/2021 where he said “litigation must come to an end” and as such the appellant’s appeal and its motion are devoid of merit and are accordingly dismissed”.
12. In the case of *Mohammed Salim t/a Choice Butchery v Nasserparia Memon Jamar* [2013] eKLR the court upheld the decision of *Portreitz Maternity v James Karanga Kabia* Civil Appeal No 63 of 1991 and stated that

“the right of appeal must be balanced against the weighty rigid right of the plaintiff to enjoy the fruits of the Judgment delivered in his favour. There must be a just cause of depriving the plaintiff of that right.
13. Looking at the process which this matter has proceeded from the time judgement was delivered on December 11, 2020, the case has been in courts at the instance of appellant/respondent upto now. I cannot agree more with the words of Justice Nzioki wa Makau that litigation has to come to an end.
14. Seeing there is no stay of execution or orders from the Court of Appeal there is no justification why the decretal sums should not be released to the respondent/applicant.
15. Thus honourable court therefore orders that the sum held in the joint interest earning account of Mwaura and Wachira and Charles Gomba & company Advocates deposited in I & M Bank Account No xxxxxxxxxxxxxxxxxx be released within 7 days from today’s date to the firm of Charles Gomba & Company Advocates.
16. Costs of the application be paid to the respondent/applicant.
17. Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 18TH AUGUST, 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by article 159(2)



(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the *Constitution* and the provisions of section 1B of the *Civil Procedure Act* (chapter 21 of the laws of Kenya) which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE

