



**Gachanja Muhoro & Sons Limited t/a Easy Mart Supermarket v Kamau & 2 others
(Environment & Land Case 497 of 2016) [2024] KEELC 7482 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7482 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 497 OF 2016**

**AA OMOLLO, J
OCTOBER 31, 2024**

BETWEEN

**GACHANJA MUHORO & SONS LIMITED T/A EASY MART
SUPERMARKET PLAINTIFF**

AND

**MARTIN NGANGA KAMAU 1ST DEFENDANT
JANE WANJIRU NGANGA 2ND DEFENDANT
DAVID WANDERI T/A TAIFA AUCTIONEERS 3RD DEFENDANT**

RULING

1. The 1st and 2nd Defendant/decreed holder moved this court vide the notice of motion application dated 27th June, 2024. They are seeking orders that;
 1. Spent.
 2. That this Honourable Court be pleased to Order the Plaintiff/Respondent to forthwith deposit a sum of Kshs.6,037,772.40 in the joint interest earning account No. 1327701421 at Kenya Commercial Bank, High Court Branch in the names of the Advocates for the parties herein.
 3. That in default and or failure to comply with Order No. 2 herein above, this Honourable Court be pleased to set aside, discharge and or vary the conditional Orders of stay of execution made on the 14th day of March, 2024 by the Honourable Lady Justice Omollo, and accordingly Order that the sum of Kshs.4,065,840 held in account No. 1327701421 at Kenya Commercial Bank Ltd, High Court Branch be released to the firm of Mwangi Kigotho & Co. Advocates forthwith.
 4. That costs of this application be provided for.



2. The application is premised on the grounds that the Respondent only deposited the sum of Kshs.4,065,840 instead of Kshs.10,103,612.40 being half the decretal sum. The application is also premised on the affidavit sworn by Mr. Mwangi Kigotho learned counsel for the Applicants.
3. The counsel deposed that in a ruling for stay of execution dated 14/3/2024, the plaintiff was directed to deposit half of the decretal sum in a joint interest earning account. That on 20th May, 2024, the plaintiff only deposited half of the principle but ignored the interest awarded. It is assertion that the decretal sum as of May, 2024 was Kshs.20,207,224 hence 50% of this is 10,103,612.40. He urged the court to direct the plaintiff to deposit the difference or the conditional stay shall lapse.
4. The plaintiff/Respondent swore a Replying Affidavit on 16th July, 2024 disputing the application. He admitted to depositing 4,065,840 which he described as half of the judgment amount. The plaintiff says he is yet to be served with a decree as at 20th May, 2024 detailing the total decretal sum. That the decree would have offered guidance on the amount to be deposited in the joint account.
5. The plaintiff annexed copies of correspondences exchanged between them pursuing the issuance of the decree which he states as not been issued to date. He therefore concludes that he cannot be faulted to comply with the directives of the court. The plaintiff added that the Applicants are not prejudiced with the non-compliance since they (Applicants) are holding a Perkins Diesel Generator IP ZOOK with a market value of Kshs.3.5 million. He added that the court eroded in the judgment for failure to take into account the sum of Kshs.2,640,000 held by the Applicants as security deposit.
6. The Applicant filed a further affidavit. They denied that the failure to serve the decree can be an excuse for default. The Applicants also denied holding any valuable assets of the Applicants asserting that they were collected. They urged the court to direct the Respondent to top up the deposit with an amount of Kshs.6,037,772.
7. Parties were granted leave to file written submissions but there is none in the CTS platform as of 29th October, 2024. This court proceeds to determine based on the facts pleaded. From the facts, there is no dispute that the judgment was entered in favour of the 1st and 2nd Defendants for the sum of Kshs.8,131,680 together with interest at the rate of 18% p.a from 30th January, 2017 until payment in full.
8. The amounts deposited by the plaintiff was half of the principle sum without inclusion of the interest. He defended the failure to include the interest because he had not been served with a decree which would have guided him. The Applicants do not deny not serving the decree but avers the judgment of the court was clear.
9. It is true the judgment was clear and the plaintiff could as well calculate the interest accrued as at May, 2024. The Applicants have not explained to this court since September, 2023 to the time of filing the present application they had not extracted and served a decree on the Plaintiff/Respondent. It is therefore my considered opinion and I so hold that the application was prematurely filed and cannot form a basis for vacating the orders of stay that were given.
10. Going forward, since the Applicants have now presented the amount of Kshs.10,103,612.40 which they aver is half of the decretal sum as at the time of filing their application or as at May, 2024 (whichever is the case), the plaintiff shall deposit the difference of Kshs.6,037,772 into the joint interest earning account. The arguments of assets held by the Applicants are neither here nor there since the same could only have been raised during the prosecution of the application for stay of execution.
11. The application is allowed in terms of prayer 2 of the application. The said sum of money to be deposited in the account No. 1327701421, KCB High Court Branch within 60 days of this ruling.



12. Since both parties were not vigilant, make an order that each party to bear their costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2024

A. OMOLLO

JUDGE

