



Mwangi v Njau (Suing as the Legal Representatives of the Estate of Grace Wairimu Muthoni - Deceased) & another (Civil Appeal E088 of 2022) [2025] KEHC 1768 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEHC 1768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E088 OF 2022
DO CHEPKWONY, J
JANUARY 30, 2025**

BETWEEN

GIBSON MWANGI APPELLANT

AND

DAVID NGANGA NJAU (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF GRACE WAIRIMU MUTHONI - DECEASED) 1ST RESPONDENT

STANLEY GACHOMO KARIUKI 2ND RESPONDENT

RULING

1. There are two applications pending determination before the court. The first one being the Notice of Motion application dated 11th August, 2023 (herein referred to as the 1st Application) and the second one is the Chamber Summons application dated 27th March, 2024 (hereinafter referred to as the 2nd application).
2. In the 1st application, the Applicant seeks the following orders:
 - a. Spent.
 - b. That the Honourable court do review or set aside the Ruling delivered on 4th April, 2023 together with all the consequential orders issued therein.
 - c. That costs be provided for.
3. The 1st Application is based on the grounds as set out on its face and the Supporting affidavit of Stanley Gachomo Kariuki sworn on the instant date. It is the Appellant/ Applicant's case that he filed an application dated 12th May, 2022, seeking a stay of execution which was granted on condition that half of the decretal sum be deposited in court, and he complied. According to the Applicant/Appellant, in a ruling delivered on 26th January, 2023, the court erroneously dismissed the whole application while



- disregarding that he had already complied with the directions issued in a ruling delivered on 12th May, 2022.
4. The Appellant/Applicant holds that the ruling contains an error on the face of the record which created a situation of unfair hearing since he had already been granted leave to file a Defence and therefore, he should not be denied the right to defend himself. He contends that the 1st Respondent passed on and substitution is yet to be done, thus this suit has already abated by dint of Order 24 Rule 3 of the Civil Procedure Rules and it would be in the interest of justice that the application be allowed.
 5. In the 2nd Application, the Applicant seeks the following orders:
 - a. That the ½ of the decretal amount being Kshs. One Million, Fifty One thousand, four Hundred and Forty five (Kshs. 1,051,445/=) deposited with the court as security be forthwith released to the Applicant's Advocates, the firm of Njau Ngigi & Company, Advocates.
 - b. Costs of this application be in the cause.
 6. The Applications were opposed through the Replying Affidavit of Daniel Nganga Njau, the legal representative of the Estate of Grace Wairimu Muthoni, sworn on 22nd September, 2023, wherein the 1st Respondent confirms that indeed the Applicants had deposited a half of the decretal sum in court in compliance with the court orders of 13th May, 2022 and that the court dismissed the entire application on 26th January, 2023. That he then instructed his advocates to commence execution proceedings but the trial court directed the Appellants to file their statement of defence and for the matter to proceed for hearing.
 7. It is the 1st Respondent's case that he filed an application dated 26th April, 2023 seeking to review the said directions which application was allowed vide a ruling delivered on 25th July, 2023, where the court erroneously held that there was a pending application for review which should be handled first and he filed yet another application for review which the trial court refused to determine while indicating that there is a matter pending in this court.
 8. The 1st Respondent holds that his advocates realised that it had filed the current application on 13th September, 2023, on the e-filing portal but which had not been served on him. He avers now that the Applicant did not give reasons why it took so long to file the application for review. He maintains that the application is meant to mislead the court that he had been granted leave to file defence yet the directions were vacated by the trial court in a ruling delivered on 25th July, 2023. The 1st Respondent also holds that the 2nd Respondent/Applicant's application is an afterthought and an abuse of court process and the same should be dismissed with costs.
 9. The court directed the application to be canvassed by way of written submissions and the Applicant filed submissions dated 8th January, 2024, while the 1st Respondent filed his submissions dated 1st July, 2024. In their respective submissions, in support or against the application, the parties have reiterated their position in their respective affidavits which this court has read and considered.

Analysis And Determination

10. Having read through the application and considered the orders sought alongside the grounds set out in the respective affidavits, written submissions filed by the parties herein, the court finds the main issue for determination is whether the court should allow the application for review of the court's ruling delivered on 26th January, 2023.
11. Section 80 of the Civil Procedure Acts provides as follows:



Any person who considers himself aggrieved-

- a. By a decree or order in which an appeal allowed by this Act, but from which no appeal has
 - b. By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
12. Order 45 of the Civil Procedure Rules, 2010 sets out the grounds to be relied on in an application for review as follows: -
- a. There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - b. There was a mistake or error apparent on the face of the record; or
 - c. There were other sufficient reasons; and
 - d. The application must have been made without undue delay.
13. Going through the conditions needed to grant an order of review the court finds that the applicant has not proved discovery of any new matter which was not within his knowledge.
14. It is the Applicant's case that the Ruling delivered on 4th April, 2023, was a result of a mistake or error apparent on the face of the record given that the court erroneously dismissed the Application. The court has indeed read through the record and confirms that indeed the court (Ngetich J) granted conditional order of stay for half of the decretal sum to be deposited in court and which was done.
15. The record also shows that still Hon. Ngetich, J in a Ruling delivered on 26th January, 2023, dismissed the application dated 12th May, 2022. This court has read through the said ruling and finds that the court had analyzed the prayers for both stay of execution and for setting aside judgment. The court noted that the Applicant had been granted several orders of setting aside the trial court's judgment and directed to file a defence but he failed to comply. The court then found them to be indolent in prosecuting the matter and for that reason, it dismissed the application.
16. Having read through the record of proceedings and rulings delivered in this case, the court finds that the Applicant has not satisfied the conditions provided for by the law under Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules as there is no error on the face of the record and neither has the Applicant demonstrated or proved discovery of any new evidence which was not within his knowledge at the time of filing the application.
17. On the issue of unreasonable delay, it is worth noting that the Ruling in question was delivered on 26th January, 2023 while the application herein is dated 11th August, 2023. The Applicant has not given the reasons for the said delay of five (5) months, two (2) weeks.
18. Ultimately, the court finds that the Notice of Motion application dated 11th August, 2023 lacks merit and the same is dismissed.
19. On the 2nd application dated 27th March, 2024, in which the Applicant seeks release of the decretal sums the response was filed and hence the same is unopposed. The court then proceeds to allow the said application as prayed.



20. For avoidance of doubt, the following orders issue:

- a. The Notice of Motion Application dated 11th August, 2023, be and is hereby dismissed.
- b. The Notice of Motion Application dated 27th March, 2024, be and is hereby granted in the following terms:
 - i. The decretal sum being Kshs. One Million, Fifty One Thousand Four Hundred Forty Five shilling (Kshs. 1,051,445.00) deposited with court as security be released to the Applicant's Advocates, the firm of Njau Ngigi & Company Advocates forthwith.
 - ii. Costs to be in the cause.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU

THIS 30TH DAY OF JANUARY, 2025.

D.O CHEPKWONY

JUDGE

