



**SNK v MSK; Prime Bank Ltd (Interested Party) (Divorce Cause 6 of 1997) [2024] KEHC 4017 (KLR) (Family) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY  
DIVORCE CAUSE 6 OF 1997**

**HK CHEMITEI, J  
APRIL 25, 2024**

**BETWEEN**

**SNK ..... APPLICANT**

**AND**

**MSK ..... RESPONDENT**

**AND**

**PRIME BANK LTD ..... INTERESTED PARTY**

**RULING**

1. This ruling relates to the application dated 25<sup>th</sup> September, 2023 filed by SNK seeking for orders that:
  - (a) This Honourable Court be pleased to order that the petitioner’s appeal herein dated 18<sup>th</sup> December, 2022, be heard on priority basis.
  - (b) This Honourable Court be pleased to order the said appeal be heard on a priority basis.
  - (c) This Honourable Court be pleased to order that it be heard by way of written submissions.
  - (d) The costs of this application be provided for.
2. The application is supported by SNK’s affidavit sworn on 25<sup>th</sup> September, 2023 stating *inter alia* that he and MSK are ex-spouses, their marriage having being dissolved by this court and have been engaged in legal battles over properties acquired during their marriage.
3. That on 16<sup>th</sup> October, 2022 the Deputy Registrar (DR) delivered a ruling on the notice to show cause dated 22<sup>nd</sup> September, 2021 which he was dissatisfied and has appealed against because it contravened



- the law that forbids a court of law from granting reliefs which an applicant has not sought and has relied on the Court of Appeal case of *Provincial Insurance of east Africa -v- Nandwa* 1995 – 98 EACA.
4. He appealed against the orders issued by the DR on 16<sup>th</sup> October, 2022 vide memorandum of appeal dated 18<sup>th</sup> December, 2022 which was filed together with an application for stay of execution which was heard and declined by Hon. Lady Justice Maureen Odero on 4<sup>th</sup> August, 2023. He faults the DR for declining to follow a binding decision of the ELC in Nairobi ELC 1325 of 2015: [\*Taramera Limited -v- Mradula Kantaria Others.\*](#)
  5. The application is opposed by MSK *vide* grounds of opposition dated 4<sup>th</sup> October, 2023 which states that there are no provisions of law on rules of procedure that allows for the making and determination of the said application which basically seeks the hearing of a purported appeal on priority basis.
  6. She stated that the allocation of dates for hearings of appeals before the Court is at the discretion of the Court registry under the supervision of the Deputy Registrar normally on a first come first served basis and there is nothing special about the purported appeal by the Applicant to warrant any special consideration.
  7. She deponed that this application is a disguised attempt to re – argue the application dated 18<sup>th</sup> December, 2022 for stay of execution that was duly dismissed by a Ruling delivered on 4<sup>th</sup> August, 2023 by the Honourable Lady Justice Odero paving way for execution to proceed. There is no appeal against the said ruling.
  8. The application is opposed by Prime Bank Limited *vide* replying affidavit sworn by George Mathui on 9<sup>th</sup> October, 2023. He states inter alia that SNK ought not to be allowed to misuse the court’s process to circumvent established standard procedures for the hearing and determination of appeals. The application has no basis in law, and that the provisions of law cited on the face of the application offer no foundation for a grant of the orders sought.
  9. That the Respondent has not proffered any exceptional grounds nor has he detailed any unusual urgency which would warrant the expedited hearing of his appeal/ or the hearing of the same on priority basis as sought. He has failed to offer any clarity regarding the particular proceedings over which he claims to prioritize his appeal. His application is therefore vague, and the orders sought cannot issue.
  10. SNK has filed submissions dated 25<sup>th</sup> January, 2024. He has relied on the Order 49 Rule 7 (2) of the [\*Civil Procedure Rules\*](#), 2010 which provides that an application from a decision of the registrar under the Orders referred to in sub rule (1) shall be to a judge in chambers.
  11. She also cited Order 49 Rule (5) of the [\*Civil Procedure Rules\*](#), 2010 which provides that formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar or, in a subordinate court, by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand, but in the event or any objection being taken to the proceedings thereunder, all further proceedings shall be before a judge.
  12. MSK has filed submissions dated 30<sup>th</sup> November, 2023. She has relied on [\*Josephine Ndenyi vs Visbak Builders Ltd\*](#) (2015) eKLR where the court stated as follows:

“Thus, the [\*Constitution\*](#) acknowledges that delayed justice is denied justice. Nonetheless, it must further be appreciated that some cases have some unusual urgency and therefore deserving a priority hearing. But such early hearing must not disregard the procedure set



down by the Civil Procedure Rules that must be complied with before a matter is set down for hearing. Those procedures are necessary for effective hearing of matters and are not mere technicalities capable of being ignored.”

13. Prime Bank Limited has filed written submissions dated 25<sup>th</sup> January, 2024. It has relied among others on Josephine Ndenyi v Vishak Builders Ltd [2015] eKLR where the court stated as follows:

“Thus, the Constitution acknowledges that delayed justice is denied justice. Nonetheless, it must further be appreciated that some cases have some unusual urgency and therefore deserving a priority hearing. But such early hearing must not disregard the procedure set down by the Civil Procedure Rules that must be complied with before a matter is set down for hearing. Those procedures are necessary for effective hearing of matters and are not mere technicalities capable of being ignored.

...

In this case, I note that the plaintiff has not even indicated whether she has complied with all the pre – trial requirements. She has not sought for pre – trial directions. The defendant has not even filed witness statements and or a list of or bundle of documents. To order that this case be heard on priority basis in the absence of evidence of compliance with pre – trial requirements under Order 11 is to jump the gun and cross the bridge before reaching it. Whoever demands for expedition in the disposal of their cases must also ensure that they comply or have complied with the mandatory procedural requirements of the law and go further to demand that the adverse party too complies. It is only when it is apparent that the adverse party is not willing to comply or is procrastinating that the court will give pre – trial directions and certify the suit as ready for trial.”

## Background

14. This matter relates to the orders issued on 16<sup>th</sup> December, 2022 by Hon. Catherine Ng’ang’a on the notice to show cause dated 22<sup>nd</sup> December, 2021 as described at paragraphs 2 and 3 above.
15. Aggrieved by the said orders, SNK has appealed and is seeking for priority hearing of the appeal via the instant application.

## Analysis and Determination:

16. I have carefully considered the application dated 25<sup>th</sup> September, 2023, the responses thereto and rival written submissions by the parties.
17. The issue for determination is whether the application for the appeal to be heard on priority basis is merited.
18. In Rashid Musungu Mango & 42 others v Director General, National Youth Service & 2 others [2018] eKLR in ordering that the matter be heard on priority basis, the court stated, “...21. I note that the orders sought by the Applicants in their application are similar to those sought in the main claim. If this Court was to grant orders sought in this application, the entire suit will be determined. The issues being raised in this application are triable issues. I will therefore decline to grant issues sought given the nature of the claim. 22. I order that the case be set down for hearing of the main claim on priority basis.”
19. In Fatuma Mohamed Haji & another v African Banking Corporation Limited & 4 others; Hussein Mohamed Yusuf (Interested Party) [2020] eKLR the court cited, with authority, the case of *Rex vs Wilkes* (1770) 4 Burr 2527, 2539 where Lord Mansfield stated, “Discretion when applied to a Court



of Justice, means sound discretion guided by law. It must be governed by Rule, not humour; it must not be arbitrary, vague and fanciful, but legal and regular.”

20. It is not disputed that there are existing orders of this court issued by Hon. Musyoka J, against the Respondent/ Applicant, which he has failed to comply with, for close to 9 years. He has not controverted these assertions.
21. Be it as it may I agree with the respondents that the applicant has not set out any exceptional circumstances and reasons why the appeal ought to be priorities. As a matter of fact, were it not for this application perhaps the appeal against the Deputy Registrar decision would have been heard.
22. I do not therefore find any reason to exercise my discretion herein. They have been in this corridors of justice for close to a quarter of a century but I think the applicant has contributed much of the delay.
23. In the premises the application is hereby disallowed with no order as to costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 25<sup>TH</sup> DAY OF APRIL 2024**

**H K CHEMITEI**

**JUDGE**

