



**Mburugu v Kathurima (Miscellaneous Civil Application
E011 of 2024) [2024] KEHC 6410 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E011 OF 2024**

TW CHERERE, J

MAY 30, 2024

BETWEEN

ROSE MUKIRI MBURUGU APPLICANT

AND

ALEXANDER KATHURIMA RESPONDENT

RULING

1. On 25th August 2023, Judgment was entered in Githongo MCCC NO. E004 OF 2022 for the Respondent as against the Applicant on liability at 50:50% and for general damages for the sum of KES. 1,016,645/- plus costs and interest.
2. By application dated 16th January, 2024, Applicant seeks stay of execution of the judgment and leave to appeal out of time. Applicant attributes the delay in filing the appeal to delay in being supplied with the copy of the judgment which she avers was supplied on 28th November, 2023 long after the time to file an appeal had lapsed. Applicant additionally avers that the Respondent is unable to refund the decretal sum in the event the appeal succeeds and this will cause her irreparable loss if stay of execution is not granted.
3. Respondent oppose the application on the grounds that it is intended to deny him the fruits of his judgment.
4. I have considered the application in light of affidavits on record and the issue for determination is whether a case has been made for an order of leave to file an appeal out of time and stay of execution pending hearing and determination of the intended appeal.
5. Order 42 (6) of the *Civil Procedure Rules* provides that no order for stay of execution shall be made unless application has been made without unreasonable delay; substantial loss is demonstrated and security for the due performance of such decree or order is offered. (See *Endmor Steel Millers Ltd vs James Wakbulunya Makuto* [2016] eKLR).



6. The impugned judgment was delivered on 25th August 2023, this application was filed on 17th January, 2024 about 5 months from the date of the impugned judgment.
7. Whereas there's evidence that Applicant applied for the decree, proceedings and judgment on 25th August, 2023, all that the Applicant required to file the appeal was the decree and she mischievously fails to disclose when it was supplied.
8. Consequently, I find that the delay in filing the appeal has therefore not been explained to the satisfaction of the court.
9. Concerning substantial loss, there is a myriad of cases among them *Standard Assurance Co. Ltd v Alfred Mumea Komu* [2008] eKLR where the Court stated-

“Substantial loss, in its various forms is the corner stone of best jurisdictions for granting a stay. That is what has to be presented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.”
10. Respondent has not responded to the Applicant's contention that if the decretal sum is paid to him, he is not in a position to refund in the event the appeal succeeds.
11. From the foregoing, I find that Applicant has thus demonstrated that she is likely to suffer substantial loss if an order of stay is not granted.
12. The record demonstrates that Applicant on 09th February, 2024 deposited KES. 500,000/- as security for due performance of the judgment.
13. From the foregoing analysis, I find that the notice of motion dated 14th November, 2023 has merit and it is allowed in the following terms;
 1. Leave is granted to appeal the judgment and decree in Githongo MCCC No. E004 Of 2022
 2. An order of stay of execution of judgment and decree in Githongo MCCC No. E004 Of 2022 is granted pending the hearing and determination of the intended appeal
 3. The sum of KES. 500,000/- deposited with the court shall be retained as security for due performance of the judgment until the intended appeal is heard and determined
 4. The intended appeal shall be filed and served in the next 45 days
 5. Costs shall be costs in the appeal

DELIVERED IN MERU THIS 30TH DAY OF MAY 2024

T.W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Kinoti

For Applicant - Ms. Wambui for KM & M Advocates LLP

For Respondent - N/A for Nkunja & Co. Advocates

