



Board of Management Watuka Secondary School v Salama Millers Ltd & another (Miscellaneous Civil Application 39 of 2023) [2024] KEHC 8235 (KLR) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL APPLICATION 39 OF 2023
DKN MAGARE, J
JUNE 27, 2024**

BETWEEN

BOARD OF MANAGEMENT WATUKA SECONDARY SCHOOL ... APPLICANT

AND

SALAMA MILLERS LTD 1ST RESPONDENT

SAMUEL NDONGA MUTTA 2ND RESPONDENT

RULING

1. This is the most vexatious application I have ever seen. The Applicant filed an application for the Respondent to be ordered to pay per the consent. There is no judgment in this matter.
2. The court's jurisdiction to stay is donated by Order 42 Rule 6 of the [Civil Procedure Rules](#), which provides as follows: -

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (1) unless-



- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 - (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
3. There appears to have been a consent in Small Claim SCC COM E034 of 2023. There is no judgment in the High Court file. There is stay sought pending nothing.
 4. What I can discern is a question which is covered under Section 34 of the [Civil Procedure Rules](#) which provides as follows:
 1. All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
 2. The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
 3. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.
 4. Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.”
 5. It is unnecessary to set out submissions as there is no cause of action.
 6. The application is totally unmerited and a waste of the court process. It is unworthy of the court’s time. It is accordingly dismissed with costs of Kshs. 25,000/= to the Respondent payable within 14 days, failing which execution do issue.

Determination

7. The upshot of the foregoing is that I make the following orders:-



- a. The Application dated 26/9/2023 is unmerited and is consequently dismissed with costs of Kshs. 25,000/= payable within 14 days failing which execution to issue.
- b. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 27TH DAY OF JUNE, 2024.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

No appearance for parties

Court Assistant - Jedidah

