



**Benjo (K) Limited v Okwemba (Suing as the legal representatives of the Estate of Philister Nabwire Wanyama (Deceased) (Civil Appeal 69 of 2020) [2024] KEHC 10160 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 10160 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 69 OF 2020  
DO CHEPKWONY, J  
JUNE 26, 2024**

**BETWEEN**

**BENJO (K) LIMITED ..... APPELLANT**

**AND**

**HILLARY MUNAI OKWEMBA (SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF PHILISTER NABWIRE WANYAMA (DECEASED) ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the Notice of Motion application dated 13<sup>th</sup> June, 2024 which seeks the following orders:-
  - a. That the Honourable court be pleased to order that the sum of Kshs 1,000,000/= deposited in court on 8<sup>th</sup> July, 2020 by the Appellant herein as security pursuant to a court order issued on 17<sup>th</sup> June, 2020 by Hon Justice C. Meoli be released to the Respondent herein.
  - b. That the cost of this application be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Stephen Matu Ngeru, an Advocate of the High Court of Kenya representing the Respondent/Applicant sworn on the instant date and the Further Affidavit of Stephen Matu Ngeru sworn on 21<sup>st</sup> June, 2024.
3. According to the Applicant, this court delivered a judgment on 23<sup>rd</sup> November, 2023 where it dismissed the Appellant's Appeal with costs to the Respondent/Applicant. The Respondent/Applicant case that the Appellant had deposited a sum of Kshs 1,000,000/= in court on 8<sup>th</sup> July, 2020 as security in line with the condition for stay of execution of the judgement and decree of the trial court in Ruiru SPMCC No. 212 of 2019 which was issued vide a ruling of 17<sup>th</sup> June, 2020.



4. The Respondent/Applicant also holds that since the Appeal was dismissed and no further appeal has been lodged with respect to the said judgment, then the sum of Kshs 1,000,000/= should be released so that the said funds can be utilized to satisfy part of the decretal sum of Kshs 2,619,833/= together with costs and interest. The Respondent/Applicant contends that no prejudice will occasion the Appellant if the sum held is released and that it will be in the interest of justice if the Respondent/Applicant is allowed to enjoy the fruits of his judgment which is long overdue. He therefore urges that the court allows the application as prayed.
5. It is worth noting that the said application together with the Mention Notice were served upon the Appellant via email address of info@kglaw.co.ke but no response has been filed on the same application to date.
6. The Respondent/Applicant also filed a Further Affidavit wherein he has stated that should the court grant the orders of the application, then the funds of Kshs. 1,000,000/= should be deposited into the client's account in the name of S. Matu Ngeru & Co. Advocates, Equity Bank, Muranga Branch Account number 022028432XXXX for their onward transmission to their client the Respondent/Applicant herein for purposes of settling part of the decretal sum.

### **Determination**

7. The court has read and considered the Notice of Motion application, the Supporting Affidavit and the Further Affidavit together with the annexures attached thereto. Through the Remittance Advice Note from Diamond Trust Bank (DTB), the court confirms that indeed a sum of Kshs. 1,000,000/= was paid into Kiambu Law Courts Revenue Account vide Reference Number 0230062XXXX on 8<sup>th</sup> July 2020.
8. It is also confirmed that on 23<sup>rd</sup> November, 2023, the Appeal dated 2<sup>nd</sup> June, 2020 was dismissed for want of merit and so far, no other Appeal or proceedings has been filed on the same. Following the dismissal of the appeal, the next prudent step is to release the funds which were deposited as security in court. Therefore, the court proceeds to allow the application dated 13<sup>th</sup> June, 2024 with the following orders issuing:-
  - a. That the Honourable court hereby orders that the sum of Kshs. 1,000,000/= together with accrued interest deposited in court on 8<sup>th</sup> July, 2020 by the Appellant herein as security be forthwith transferred into the bank account of S. Matu Ngeru & Co Advocates, Equity Bank, Murang'a Branch in Account number 022028432XXXX for onward transmission to the Respondent/ Applicant Hillary Munai Okwemba( who sued as a legal Representative of the Estate of Philister Nabwire Wanyama-deceased).
  - b. There shall be no orders as to costs.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 26<sup>TH</sup> DAY OF JUNE, 2024.**

**D.O CHEPKWONY**

**JUDGE**

In the presence of:

Ms. Matu for Applicant

Court Assistant – Martin

