



**Autobase Trading Limited v Kalenda & another (Miscellaneous Application E019 & E018 of 2025 (Consolidated)) [2025] KEELRC 2577 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2577 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E019 & E018 OF 2025 (CONSOLIDATED)  
M MBARŪ, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**AUTOBASE TRADING LIMITED ..... APPLICANT**

**AND**

**JAMES LUBEKH KALENDA ..... 1<sup>ST</sup> RESPONDENT**

**GOEFFREY OMONDI OJWANG ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Both applications under Misc. E019 and E018 of 2025 are similar and raise similar issues by the applicant. It is imperative to place them together for this ruling.
2. Misc. Application E019 of 2025 shall be the lead file.
3. The applicant filed an application dated 15 April 2025, seeking orders that the court set aside the orders of 18 March 2025, which had dismissed the application dated 6 February 2025, and that the same be reinstated for hearing on merit. The subject application was seeking a stay of execution of the judgment and decree in Mombasa MCELRC No. E593 of 2023, pending the hearing and determination of the same.
4. The application is supported by Naomi Kinuva, Advocate for the applicant and Grace Gambo, legal assistant at the firm of Muturi Gakuo & Kibara Advocates.
5. The applicant asserts that the application dated 6 February 2025 was scheduled for hearing on 18 March 2025, but regrettably, the law firm's legal assistant diarised the matter on 25 March 2025 instead of the correct date.
6. The matter proceeded on 18 March 2025, and the court dismissed the application dated 6 February 2025 for non-attendance; the interim orders of stay of execution were vacated. The respondent commenced execution. The decree has been obtained, and there is a risk that execution will proceed.



7. The mistake of counsel should not be visited against the applicant and set away from the seat of justice. The orders sought to be allowed in the interests of justice.
8. In reply and submissions, the respondent asserts that upon the judgment of the lower court in Mombasa, MCELRC No. E593 of 2023, the applicant was granted 30 days stay of execution. The respondent did not object to the orders of stay of execution. However, the applicant failed to satisfy the terms of the judgment and instead has resorted to filing multiple applications aimed at frustrating the respondent from enjoying the fruits of the judgment.
10. The instant application is an afterthought aimed at perpetuating injustice against the respondent and should be dismissed.

### **Determination**

11. At the core of the instant application is the applicant's application dated 6 February 2025, where he sought a stay of execution of the judgment in Mombasa MCELRC No. E593 of 2023 and also sought leave to appeal out of time against the judgment.
12. Both parties attended on 25 February 2025, and hearing dates were allocated in open court with consensus for 18 March 2025.
13. The applicant's assertion that the legal assistant, Grace Gambo, failed to properly diary the matter for the hearing is incorrect. Ms Kinuva, representing the applicant, was personally present in court on 25 February 2025, and interim orders were extended to allow the parties to file skeleton written submissions and attend the hearing on 18 March 2025. Blame cannot be placed on the legal assistant. Counsel must take personal responsibility for failing to attend court on a date allocated in her presence.
14. The trial court granted the applicant a stay of execution for 30 days. There was no compliance. That was on 5 November 2024, as deposed by the respondent in his Replying Affidavit.
15. This non-compliance with court orders does not place the applicant in good standing with the court.
16. However, this is a court of justice, and justice demands that all parties be treated fairly, save where a party has demonstrated an unwillingness to comply as directed; conditions are necessary.
17. In this regard, the respondent, in reply, asserts that there is a decretal sum of Ksh. 865, 123.30 in issue. This amount should be deposited in court within 14 calendar days from the date hereof. Failure to comply, the entire miscellaneous application shall be deemed abandoned.
18. Accordingly, the application dated 6 February 2025 is hereby reinstated on the following conditions;
  - a. The applicant shall deposit the sum of Ksh. 865,123.30 in court within 14 calendar days from the date hereof, 8 October 2025, failure to which, the entire suit shall be deemed abandoned with costs to the respondent;
  - b. The applicant shall meet the respondent's costs assessed at Ksh. 15,000 to be paid within 14 days;
  - c. Where (a) above takes effect, the respondent is to claim costs accordingly;
  - d. Move the court accordingly.
19. Orders above apply to Misc. E018 of 2025;
  - a. The deposit shall apply in the sum of Ksh. 1,045,721;



b. The costs due to the respondent Ksh 15,000;

c. Where there is no compliance, the entire application shall stand dismissed with costs

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF SEPTEMBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

