



Njuguna v National Construction Authority (Employment and Labour Relations Cause 2252 of 2015) [2025] KEELRC 2439 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2439 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2252 OF 2015**

**HS WASILWA, J
SEPTEMBER 18, 2025**

BETWEEN

ARCH FRANCIS KARIUKI NJUGUNA CLAIMANT

AND

NATIONAL CONSTRUCTION AUTHORITY RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 23rd January 2025 seeking orders that: -
 1. this Honourable Court doth be pleased to direct and/or order that the interest that has accrued, is accruing and/or arises from the decretal sum deposited in the joint interest earning account opened in the names of the firms of advocates on record herein under National Bank Account Number XXXXXXXXXXXXX be released to the Respondent/Applicant.
 2. costs of this Application be provided for.

Respondent/Applicant's Case

2. The Respondent/Applicant avers that on the 6th October 2023, the Court of Appeal delivered its judgment in Civil Appeal Number 172 of 2019 that arose from the decision, in this matter, by the Hon. Justice Wasilwa delivered on the 25th February 2019.
3. The Respondent/Applicant aver that Court of Appeal's determination allowed the Applicant's appeal while dismissing the Respondent's cross-appeal, thereby, rendering the Applicant herein as the successful party at the conclusion of all the suits that were litigated before the Courts.
4. The Respondent/Applicant avers that as condition for stay of execution, on 19th July 2019, the Court directed that the decretal sum be deposited in a joint interest earning account that would be registered in the names of the firms of advocates on record.



5. It is the Respondent/Applicant's case that it duly deposited the decretal sum in the joint interest earning account, which sum has been accruing interest from the date of deposit and subsequent to on or about the 29th February 2024, when the Claimant/Respondent was duly paid his award.
6. The Respondent/Applicant avers that upon lodging a successful appeal, the interest accrued ought to be released to the Respondent/Applicant, it having emerged as the successful party in the suit.
7. The Respondent/Applicant avers that the interest accrued arose from funds that were drawn from public coffers, therefore, the yield therefrom comprises of public funds that demand to be transparently and accurately accounted for especially noting the provisions and dictates of, inter alia, Articles 225, 226 & 232 of *the Constitution*.
8. It is the Respondent/Applicant's case that pursuant to the provisions of Article 10 (2) (c), it is incumbent that the amount accrued in interest be released to the Respondent/Applicant as it comprises of public funds that are the subject of public interest and deserve to be sufficiently accounted for.
9. The Respondent/Applicant avers that it is apprehensive that if this present application is not placed before the Hon. Judge at the earliest opportunity, it may suffer scrutiny and may be condemned for failure to adequately account for and/or remit the yield of such public funds.

Claimant/Respondent's Case

10. In response to the application, the Claimant/Respondent filed a replying affidavit dated 19th May 2025.
11. The Claimant/Respondent it is not entirely correct that the Appellant was the successful party in the said appeal since the superior court only deducted one-month salary in lieu of notice from the award of this Court's decision.
12. The Claimant/Respondent avers that the court ordered for the decretal sum to be deposited into a joint interest earning account which orders were effected.
13. It is the Claimant/Respondent's case that Equity regards Beneficiary as the true Owner as such, he ought to benefit from the entire interest earned from the Judgement sum of Kshs 5,979,435.88 being the beneficiary of the said decretal sum that was held in trust in a joint interest earning account. The Respondent/ Applicant can only claim interest on Kshs 448,000/= being the amount deducted from the lower Court award of Kshs 6,427,435.88.
14. The Claimant/Respondent avers that out of Kshs. 6,427,435.88 that was awarded by this court only Kshs. 448,000 was deducted from the judgment sum and thereby Kshs. 5,979,435.88 was to be payable to the Respondent and as such the Applicant can only claim interest on Kshs. 448,000 since that is what is due to them and the rest released to the Respondent.
15. The Claimant/Respondent avers that the sum in question was never released to him and as such had the same been released to him upon delivery of this Court decision he would have put it to proper use and thus have been able to multiply the same.
16. It is the Claimant/Respondent's case that the Applicant did not pray for interest during trial of the matter therefore their claim for award of interest where none was awarded in the Employment and Labour Relations Court lacks legal basis. He relied in Peter Baraza Rabado v Nation Newspapers Limited [2017] KECA 555 (KLR).
17. The Claimant/Respondent further relied in Mbonika v G4S Security Limited & another [2023] KEELRC 529 (KLR) where the Court dismissed the Applicant's application and ordered the interest



earned on the decretal sum deposited in the joint interest account of Counsel for the parties be shared in the ratio and percentage of the award.

18. The Claimant/Respondent avers that in the alternative the Court to order the interest accrued be split between the Respondent/Applicant and the Claimant/Respondent in the ratio of the amount deposited in the interest earning joint account.

Respondent/Applicant's Submissions

19. The Applicant submitted that since there was no order from the Court of Appeal to the effect that the Claimant/ Respondent was awarded interest on the decretal sum or any interest that had accrued in the joint account, then any claims by the Claimant/ Respondent to get the interest accrued in the joint account is couched in mala fide and is a blatant attempt towards unjust enrichment.
20. The Respondent/Applicant quoted the Court of Appeal decision in verbatim:

“ The appellant's appeal is hereby allowed to the effect that the judgement and Decree of the Employment and Labour Relations Court of Kenya at Nairobi (H. Wasilwa, J.) delivered on 25th January 2019 in ELRC Cause No. 2252 of 2015 be and is hereby set aside_ therefore award to the respondent as against the appellant in the sum of Kshs. 6,427,435.88 less Kshs. 448,000/- hereby set aside on account of the unmerited 1 month's salary in lieu of notice. Accordingly, the appellant shall pay to the respondent a net sum of Kshs.5 979.435/88. Each party shall bear their own costs of this appeal and of the cost appeal...”
21. The Respondent/Applicant submitted that even though the trial court may have made orders for costs and interest in favour of the Claimant, the said judgment has now been set aside by the Court of Appeal judgment, which neither awarded interest nor costs to the Claimant/Respondent. The trial court only made a finding as to the interest pertaining to the decretal sum as per the provisions of Section 26 of the *Civil Procedure Act* and not on interest concerned with the joint interest account.
22. It is the Respondent/Applicant's submissions that that if both the trial and appeal court had intended that the interest accrued in the joint account be factored together with the decretal sum, then either would have expressly ordered so. This particular interest would have been strictly tabulated as per bank records and added to the decretal amount for settlement by the Applicant.
23. The Respondent/Applicant submitted that the Court of Appeal was categorical as to what was due to the Claimant/Respondent. The Court of Appeal then proceeded to set aside the whole judgment of the trial court, made no mention of interest and further proceeded to order that each party bear its own costs. To this extent, the Claimant/Respondent cannot seek to rely on Peter Baraza Rabado v Nation Newspapers Limited [supra] to further award themselves interest on the decretal sum or from the joint interest account and the court should find thus.
24. It is the Respondent/Applicant submissions that the Respondent has already enjoyed the fruits of the judgment of the Appeal process- which was paid in its entirety. Therefore, allowing the Claimant/ Respondent to once again dip into its coffers, in the same legal matter, would not only be unjust and unfair but will likely establish a negative precedent on the issue of depositing money in escrow accounts as a condition of stay.
25. The Respondent/Applicant submitted that court should take cognizance that it is a public entity, and has to strictly adhere to set laws and guidelines on any monies moving in and out of the public coffers. It has already paid off the decretal amount and any further payments to the Claimant/Respondent will amount to an illegality and will definitely fall for scrutiny.



Claimant/Respondent's Submissions

26. The Claimant/Respondent submitted that it is a settled principle of equity that interest earned on a sum held in trust belongs to the beneficial owner of the principal sum. The decretal sum was held in the joint interest earning account subject to the hearing and determination pursuant to a Court Order having emerged successful in the Trial Court where the court awarded Kshs 6,427,435.88 to the Claimant. On appeal, the Claimant was the true beneficiary of Kshs. 5,979,435.88, while the Respondent only succeeded in deducting Kshs 448,000, it follows that interest should be apportioned accordingly.
27. The Claimant/Respondent submitted that had the appeal fully succeeded then the Applicant would have been entitled to the entire interest and if it had not succeeded at all, the Claimant/Respondent would have been entitled to the entire interest.
28. It is the Claimant/Respondent's submissions that to award the Applicant all the interest would be to unjustly enrich them at its expense, whereas, it is entitled to the majority of the principal and has been deprived of its use during the pendency of the appeal.
29. It is the Claimant/Respondent's submissions that the Applicant has sought for interests under Section 26 of the *Civil Procedure Act* whereas none was awarded by the trial Court. Further, the Respondent/Applicant did not pray for interest during trial, and the court did not award any interest in its final judgment. He relied in Peter Baraza Rabado v Nation Newspapers Limited [2017] KECA 555 (KLR) where the court held:

“if the Applicant was aggrieved with the decision of the learned Judge on the issue of interest, he should have appealed against it. Having failed to do so, this Court has no basis to interfere with the decision of the learned Judge on the issue of interest and we so hold.”
30. It is the Claimant/Respondent's submissions that the Applicant's attempt to seek interest through a post-judgment application is therefore procedurally irregular and legally unfounded.
31. The Claimant/Respondent submitted that in the alternative, the court orders that the interest accrued be shared proportionately based on each party's entitlement to the principal amount. He argues that he t is entitled to approximately 93% of the principal sum, while the Respondent/Applicant is entitled to only 7%, corresponding to Kshs 448,000 out of Kshs 6,427,435.88.
32. I have examined the averments and submissions of the parties herein. The contention by the applicant is that upon earning a judgment before this court this court directed the decretal sum to be deposited in an interest earning account held in joint names of counsels on record as a condition precedent to stay pending appeal.
33. The Court of Appeal determined the appeal and allowed it only reducing the amount payable of kshs 6,427,435.88 to 5,979,435.88 less kshs 448,000/-. The applicant has applied to have the interest accrued on the amount released to him.
34. In determining this application I want to state that the amount confirmed by the court of appeal payable to the claimant of kshs 5,979,435.88 is an amount which was partly awarded to the claimant in its judgment on 25/2/2019. The amount having been confirmed was due and payable but was delayed pending the delivery of the judgment by the Court of Appeal on 6/10/23. The amount definitely earned interest when deposited in a joint interest earning account and the respondents cannot lay full claim to all interest due on the judgment. The prudent decision is for the parties to earn interest based on the ratio and percentage of the award.



35. This was the reasoning and finding of the court in Mbonika vs G4S Security Ltd & Another (2023) KELRC 529 (KLR) supra when the court made a similar finding ordering the interest on the account be shared in the ratio and percentage of the award.
36. I do agree with the finding of the learned judge in the cited case and order that the interest earned be shared out in the ratio of the award with the claimant getting interest on kshs 5,979,435/88 and the respondent kshs 448,000/-.
37. Costs of this application to the respondent/claimant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

