



Securkenya Group Limited v Wesiko (Employment and Labour Relations Appeal E021 of 2023) [2025] KEELRC 2506 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2506 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E021 OF 2023**

**JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

SECURKENYA GROUP LIMITED APPELLANT

AND

FRANCIS MUNYANCHA WESIKO RESPONDENT

RULING

1. The applicant filed an application by way of Notice of Motion dated 7th May 2025 brought under Section 1A, 1B AND 3 of the [Civil Procedure Act](#), Order 51 Rule 1 of the Civil Procedure Rules, 2010, the Inherent Powers of the Court and all enabling provisions of the Law seeking for Orders-
 - i. Spent
 - ii. Spent
 - iii. That there be an order directing Cooperative Bank of Kenya Limited, Parliament Road, to release the sum of Kshs. Kshs. 839,280.00 from Account No. 011012386xxxxxx to the Appellant/Applicant SecurKenya Group Limited through its Advocates Mutanda Law Advocates.
 - iv. That the Deputy Registrar be directed to sign release of funds forms on behalf of M'Njau & Mageto Advocate, for the sum of Kshs. 839,280 held in Co-operative Bank of Kenya Ltd, account number 011012386xxxxxx , account name Mutanda Law Advocates And M'njau & Mageto Advocates, Parliament Road Branch.

Grounds of the application

2. That on 13th June 2023, Honourable H.M. Nga'ng'a ordered the Applicant herein to deposit as decretal sum of Kshs. 839,280 and costs of Kshs, 110,950,00 in a joint interest account in the names of the advocates acting for the parties.



3. That the said sums were to be deposited as a conditional stay of execution pending hearing and determination of appeal.
4. That the Applicant complied with the said orders by depositing the sum of Kshs. 839,280.00 in an escrow, whereas the costs of Kshs. 110,950.00 were paid in advance to the Respondent's advocates.
5. That the appeal has since be determined with a judgment having been rendered on 28th March 2025. The Applicant partially succeeded in the appeal, the original award of Kshs. 839,280.00 was substituted with the sum of Kshs. 150,000.00 plus costs and interests.
6. That the Respondent's Advocates have now refused to cooperate in having the said amounts held in the escrow account released to the Applicant's advocates for purposes of facilitating payments of the Judgment sum and advocates fees.
7. That the sole purposes of the escrow account was to hold funds pending appeal, the appeal has since been determined and there is no basis for the said funds to continue being held in the escrow account at the detriment of the Applicant.
8. The application was supported by the affidavit of Mossas Benjamin of even date and his supplementary affidavit dated 22nd May 2025.
9. The application was opposed by the respondent vide his affidavit dated 21st May 2025 which stated as follows:-
 - a. That after the determination of the appeal where the Appellant/ Applicant was partially successful and being dissatisfied I filed a notice of appeal to the Said Judgement. (Attached and marked FMW - 1 is the copy of notice of appeal).
 - b. That since I was awarded costs to the suit I am in the process of filing a bill of taxation before the taxing officer.
 - c. That there is no time that my Advocates on record have refused to co-operate, to have the said amount deposited jointly to be released since my Advocates works on my instructions.
 - d. That in the above circumstances where I have lodged notice of appeal and pursuing filing of bill of taxation then it would be premature to release the said amount deposited jointly.
 - e. That I am advised by my Advocates on record which information I verily believe to be true that the matter has not been fully exhausted as I am Interested to appeal against the Judgement as delivered on 28th March 2025
 - f. That there would be no prejudice to the Appellant/Applicant if the money continues to be held until my intended appeal is heard and determined.
10. The application was canvassed by way of written submissions.
11. As a condition of granting an order of stay of execution pending appeal, the lower court Hon. Ng'ang'a ordered the deposit of the decretal sum of Kshs. 839,280/- in escrow account held by advocates of the parties. This was done. On appeal, the court entered judgment for the respondent for the sum of Kshs 150,000 with interest and costs from the judgment date. The applicant states that it had settled the costs of Kshs. 110,950 to the claimant's advocates. The applicant filed the decree under supplementary affidavit drawn by the lower court for the sum of Kshs. 150,000 plus interest as at 28th May 2025.
12. This court is now functus officio and has delivered its judgment on appeal. The security covered stay of execution pending appeal. The Notice of Appeal has no effect on the orders related to the



stay of execution by the lower court. The security has served its purpose and there is no justification of continued existence of the escrow account. I uphold the decision in *James Kimani Maina v Athi Water Services Board & another* [2021] eKLR, where Justice Chitembwe(as he then was) held;”On 17/4/2015, Justice Onyancha made the following orders:-

1. Interim stay of execution of decree granted until 4/5/2015 on condition that the decretal sum of Kshs. 7,092,497 is deposited in court before 4/5/2015.

Upon the hearing and determination of the suit before this court, the security lost its relevance. There is no requirement in law that a Respondent does provide security as a condition to the appeal being heard. A party who has lost before the trial court cannot give conditions to the successful party to provide security in case his appeal succeeds. Once the appeal succeeds that will totally be a different matter. The Court of Appeal has not requested the Respondent to provide security.

The Black’s Law Dictionary (10th Edition): defines “security” as collateral given or pledged to guarantee the fulfilment of an obligation.

The money deposited in court was to be used as security so as to allow the Defendant defend the suit before the trial court. It was not meant to be utilized as security to enable the Plaintiff prosecute his appeal in case he was not successful at the High Court. To extend the security to cover the appeal would amount to holding the Defendant at ransom. The money was deposited way back in 2015 and it is prudent to have it released so that the Defendant can exercise the right to its property.

It is my considered view that the release of the money does not render the appeal nugatory. The Appellant cannot anticipate that it will be difficult to execute should the appeal succeed if the money is released. How many appellants have the comfort of security having been deposited by a successful respondent. The appeal will be heard and whatever is awarded will be pursued through the normal execution process. The Applicant was asked to deposit the money in court and quickly complied. I believe the Applicant is in a position to satisfy any decretal sum that will be awarded to the Appellant. There shall be no miscarriage of Justice if the money is released. The Respondent is a public institution which is capable of paying the Appellant in case the appeal is successful.

It is my further finding that the fact that an appeal can be heard and determined within a short time cannot be the reason to ask a respondent to provide security or to hold a security provided to the trial court whose decision is the subject of the Appeal. The superior court should be the one to call for the security if it finds that there is need for it. The provision of security in civil disputes should not be converted into punishing parties. Litigants should always be on an equal footing. The Appellant should pursue his appeal just like any other Appellant and should not be excited by the comfort of the security provided by the Defendant to a different court.” I uphold the decision to apply in the instant case.

13. The application is held as merited and allowed as follows:-
 - a. That there be an order directing Co-operative Bank of Kenya Limited, Parliament Road, to release the sum of Kshs. 839,280.00 from Account No. 011012386xxxxxx to the Appellant/Applicant SecurKenya Group Limited through its Advocates Mutanda Law Advocates.
 - b. That the Deputy Registrar is hereby directed to sign release of funds forms on behalf of M’Njau & Mageto Advocates, for the sum of Kshs. 839,280 held in Co-operative Bank of Kenya Ltd,



account number 011012386xxxxxx , account name Mutanda Law Advocates And M'njau & Mageto Advocates, Parliament Road Branch.

14. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Appellant/Applicant - Mutanda

Respondent: Absent

