



**Riley Falcon Security Services Limited v Nyagah & another (Appeal E003 of 2024) [2024] KEELRC 2108 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2108 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
APPEAL E003 OF 2024  
M MBARŪ, J  
JULY 25, 2024**

**BETWEEN**  
**RILEY FALCON SECURITY SERVICES LIMITED ..... APPELLANT**  
**AND**  
**RAYMOND MAINA NYAGAH ..... 1<sup>ST</sup> RESPONDENT**  
**ROBERT NICHOLAS ABUCHI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The appellant filed an application dated 12 June 2024 seeking orders that
  - a. Spent;
  - b. The sum of Kshs 755,860 deposited in court on 30<sup>th</sup> April 2024 by the appellant/applicant pursuant to this court’s directions on 25 April 2024 be released to the parties as follows;
    - i. Kshs 326, 131.80 to the firm of Derrick Odhiambo Advocates being advocate’s costs and the decretal sum for the respondents less statutory deductions.
    - ii. Kshs 429, 728.20 to the firm of C.O. Tolo & Co. Advocates representing the appellant.
  - c. That costs of this application be provided for.
2. The application is made on the grounds that the decretal sum deposited in court on 30 April 2024 was based on court directions in this matter and to secure the appeal herein. On 16 May 2024, the court delivered judgment and awarded the 1<sup>st</sup> respondent Kshs 202, 000 less statutory deductions and 2<sup>nd</sup> respondent Kshs 120, 000.
3. The application is supported by Nancy Machage the legal officer of the appellant who aver that on 4 June 2024 parties recorded a consent on advocate costs at Kshs 95, 900 before the trial court in Malindi CMELRC No.E013 of 2021. The respondents’ Advocate is demanding to be paid Kshs 418,



- 400 contrary to the judgment herein and has threatened to proceed with execution. There is no reason why the decretal sum of Kshs 326, 131.80 should not be released to the respondents while the sum of Kshs 429, 728.20 be released to the appellant.
4. In reply, the respondents filed the Replying Affidavit of Raymond Maina Nyagah the 1<sup>st</sup> respondent who aver that the appellant has failed to include the sum of Kshs 162, 121.60 in the tabulation of auctioneer's costs. The amount arrived at on 25 April 2024 when the matter came up for hearing of the appeal was based on the fact that the auctioneers had already proclaimed motor vehicle KCS 818Y and the court directed the same be returned to the appellant pending hearing of the appeal. The respondents did comply and hence, the due costs should be paid.
  5. Nyagah also aver that the court had given the appellant 7-day stay of execution and that there should be a deposit of the decretal sum in court within which time the appellant should prosecute its application. There was no compliance. The appeal was determined on 16 May 2024 and the respondents should be awarded costs of Kshs 30, 000.
  6. The decretal sum deposited in the court should be released as follows;
    - a. Kshs 326,131.80 decretal sum;
    - b. Kshs 162,121.60 auctioneers costs;
    - c. Kshs 30,000 costs to the respondentsTotal Kshs 518, 253.40.
  7. Both parties attended court for submissions.
  8. The appellant submitted that to secure the hearing and determination of the appeal herein, there was a deposit of Kshs 785, 860 as security. On 16 May 2024, the court delivered judgment and ordered the decretal sum be paid less statutory deductions which the appellant tabulated and a total of Kshs 326, 131.80 is due and the same should be paid from the deposited security.
  9. The respondents are seeking to be paid Kshs 162, 121.60 for the auctioneers but this is inflated. Only a proclamation notice was issued. The fee note served before the attachment cannot include other charges. The parties were in court on 25 April 2024 and the court directed that the attachment was null and void and the motor vehicle attached should be returned. Where the auctioneer incurred any costs, these should be taxed.
  10. The respondents submitted that a successful litigant should be paid costs. The decretal sum is not contested and this can be released immediately. For statutory deductions, the appellant should issue the P9 form to confirm remittances. Auctioneers costs are Kshs 126, 121 and should be paid. On 26 April 2024, the court directed the respondents to audit costs and the bill was filed. The fact of execution is not contested and the due costs should be paid with a total due being Kshs 518, 253.40.

### **Determination**

11. The judgment herein was delivered on 16 May 2024. The decretal sum is not contested at all at Kshs 326, 131.80. Pending the hearing and determination of the appeal, there was a conditional stay of execution. The appellant complied.
12. Based on the judgment, the decretal sum should be paid to the respondents less the statutory deductions and under Section 49(2) of the *Employment Act*. The condition that the same should be done upon production of the P9 form to Kenya Revenue Authority is to be addressed by the appellant internally and not for regulation by the court.



13. On auctioneers' costs, on 24 April 2024, the court granted the appellant a conditional stay of execution. There was the duty to prosecute the appeal within 30 days and the matter was placed for mention on 25 April 2024.
14. The respondents tried to proclaim the appellant's goods which was addressed by the court and directions were issued that whatever costs had been incurred as of 9.30 am on 25 May 2024 be audited and any attached motor vehicles be returned to the appellant. The respondents were required to file an affidavit in this regard.
15. In the affidavit of the 1<sup>st</sup> respondent, he has attached a fee note from the auctioneer for a total sum of Kshs 162, 121.60 from 20 March 2024 to 25 April 2024 without indicating the timelines as noted by the court when the matter was mentioned at 9.30 am.
16. For completeness, the fee note submitted by the respondents regarding any procedures gone into in execution, the same shall be taxed per the scale and taking into account the motions gone into on 25 April 2024 were stopped by the court before any further attachment/execution proceedings could take place. Indeed the record is that the respondents' advocate was not able to confirm how far the process had gone. Justice demands that both parties should benefit from the law. On the court orders, the procedures have been gone into on 25 April 2024 and were regulated by the court. No fee is due.
17. Accordingly, the application dated 12 June 2024 is allowed in the following terms;
  - a. The security deposited by the appellant herein shall be released as follows;
    - i. The sum of Kshs 326,131.80 to be released to the firm of Derrick Odhiambo Advocates being the advocate's costs and the decretal sum for the respondents less statutory deductions to be determined by the appellant;
    - ii. The sum of Kshs 429, 728.20 to be released to the firm of C.O. Tolo & Co. Advocates representing the appellant.
  - b. The respondents shall file a bill of costs for the auctioneers to be assessed by the Taxing Officer accordingly and without negating orders (a) above.
  - c. For this application, each party is to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 25 DAY OF JULY 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet Muthaine

..... and .....

