



**Alubale & another (Suing for and on Behalf of the Estate of Silvano Okili Mbandu
- Deceased) v Saumu Construction Services Limited & another (Miscellaneous
Application E013 of 2025) [2025] KEELRC 2789 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2789 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E013 OF 2025**

**M MBARŪ, J
OCTOBER 16, 2025**

BETWEEN

**LISTONE JOHN ALUBALE 1ST APPLICANT
LEAR AYUMA MBADU 2ND APPLICANT
SUING FOR AND ON BEHALF OF THE ESTATE OF SILVANO OKILI
MBANDU - DECEASED**

AND

**SAUMU CONSTRUCTION SERVICES LIMITED 1ST RESPONDENT
KENYA ORIENT INSURANCE COMPANY LIMITED 2ND RESPONDENT**

RULING

1. The 2nd respondent, Kenya Orient Insurance Company Limited, filed an application dated 1 September 2025 seeking Orders:

This court be pleased to grant a stay of execution of the ruling delivered on 27 March 2025 pending the hearing and determination of the appeal preferred to the court of appeal in respect of the ruling delivered on 30.6.2025.

2. The application is supported by the Affidavit of Amin Said Amin, the manager of the Mombasa branch. He asserts that on 31 January 2025, the estate of Silvano Okili Mbandu (deceased) filed an application seeking the court to enforce the DOSH award against the 1st respondent. The 1st respondent had been sued by the estate of the deceased, which filed an application dated 25 February 2025 to have the 2nd respondent joined to the matter on the grounds that it was the insurer.
3. The court closed the case on 27 March 2025 and ordered the 2nd respondent to pay Ksh. 1,152,000 plus burial costs of Ksh. 654,200 with costs. The 2nd respondent was condemned unheard.



4. Through an application dated 4 April 2025, the 2nd respondent sought to have the ruling set aside and be granted leave to defend the matter. The application was dismissed on 30 June 2025. Aggrieved, the 2nd respondent has filed an appeal to the Court of Appeal. There is a Notice of Appeal on record. The appeal has high chances of success.
5. There is a risk of execution of the ruling herein, and unless the orders sought are issued, the 2nd respondent will suffer loss and damage. The 2nd respondent is willing to deposit a bank guarantee in security for the due performance of the orders herein.
6. In reply, the applicants filed the Replying Affidavit of Linstone John Alubale on behalf of the co-administrator of the estate of the deceased, Silvano Okili Mbandu. He avers that the estate of the deceased should be allowed to enjoy the fruits of the judgment herein delivered on 27 March 2025 and the ruling delivered on 30 June 2025. The 2nd respondent was served correctly but failed to attend court as required, which led to the ruling delivered on 30 June 2025.
7. The court has since addressed the issues raised in the instant application with finality; hence, the application is res judicata.
8. Alubale argues that the 2nd respondent in the current application has not met the threshold of Order 42 rule 6 of the Civil Procedure Rules. There is no demonstration of what substantial loss will be suffered if execution is allowed to proceed. The decretal sum compensates a deceased employee and cannot be equated to irreparable loss by an insurer.
9. The instant application was not made promptly. The proposal to deposit a bank guarantee is inadequate. Where this may be allowed by the court, the applicants seek that there be a money deposit in a joint interest-earning account held by the parties in the sum of Ksh. 2,059,068.
10. The 1st respondent attended and supported the submissions by the applicants.
11. The gist of the application by the 2nd respondent is for a stay of execution of the ruling delivered on 27 March 2025, pending the hearing and determination of the appeal concerning the ruling delivered on 30 June 2025.
12. In the ruling delivered on 30 June 2025, the court addressed an application made on 3 April 2025, where the 2nd respondent was seeking orders.

The court be pleased to set aside the judgment/ruling entered on 27 March 2025 against the 2nd respondent herein, and the 2nd respondent be granted leave to file its response in this matter as per the draft preliminary objection.

13. The question of the stay of execution with regard to the application and orders issued on 27 March 2025 has since been addressed with finality.
14. The same application cannot be revived through other means, particularly in cases where there is an arguable appeal. No such appeal has been submitted, aside from the Notice of Appeal. The Notice of Appeal merely indicates an intention to appeal; it is not the appeal itself.
15. From 27 March 2025, the 2nd respondent has continued to file various applications on the issues addressed. The referenced ruling of 30 June 2025 considered that the 2nd respondent was properly served with the application, which led to the ruling delivered on 27 March 2025, and failed to attend court as required.



16. Taking parties and the court back and forth is sheer abuse of the court process. Offering a bank quarterback's security without any appeal or due diligence on matters already addressed by the court is proof of abuse of the court process. The offer to deposit security on its own is not sufficient to persuade the court to allow the application as currently couched.
17. Where, indeed, there is an appeal at the Court of Appeal, which is not supported, the deceased estate has a duty to render an account over any payments received. I will say no more.
18. Accordingly, the application dated 1 September 2025 is without merit. It is dismissed with costs to the applicants. The 1st respondent to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 16TH DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

