



REPUBLIC OF KENYA



KENYA LAW
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**Kimuyu & 5 others v Muthuvi (Appeal E071 of 2024)
[2025] KEELRC 2694 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2694 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E071 OF 2024
NJ ABUODHA, J
OCTOBER 3, 2025**

BETWEEN

**JOSHUA NZAU KIMUYU 1ST APPELLANT
JOHN KATETE 2ND APPELLANT
DAVID MUUO MUSYOKI 3RD APPELLANT
ERIC MAKAU 4TH APPELLANT
AFRICAN INLAND CHURCH - KENYA NAIROBI AREA CHURCH
COUNCIL 5TH APPELLANT
KASARANI WEST DISTRICT CHURCH COUNCIL 6TH APPELLANT

AND

SIMON MWANGANGI MUTHUVI RESPONDENT**

RULING

1. The Appellants filed a Motion dated 21st March, 2024 brought under Order 22, Rules 25, Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act* and article 48 of the *Constitution* seeking orders among others that:
 - i. (spent)
 - ii. There be a stay of execution of orders in Milimani MCELRC No. E636 of 2020 pending the hearing of the intended appeal.
2. The application was supported by the grounds set out in the Application herein and the Affidavit of John Mutisya Mutua who averred among others that:-



- a. That I am one of the treasurers of the 5th and 6th Appellant/applicant herein with full knowledge and information concerning this matter thus able and competent to swear the affidavit.
 - b. That judgment was entered against the appellants/applicants by the trial court on 31st January, 2023 in Milimani MCELRC No. E636 of 2020
 - c. That the Appellant/Applicant then filed an application dated 30th August, 2023 whereby they prayed for Review and/or setting aside of the judgment with a view of statutory deduction.
 - d. The ruling was delivered on 26th February, 2024 in favour of the Respondent.
 - e. That on 26th February, 2024 the Chief Magistrate's Court at Milimani delivered a ruling in this matter (Annexed hereto and marked "J MM 1 " is a true copy of the ruling).
 - f. That being dissatisfied and aggrieved with the ruling delivered on 26th February, 2024 in MCELRC No, E636 of 2020 I pray for stay of execution pending the application for appeal of this suit.
 - g. That Applicants being dissatisfied with the ruling of 26th February, 2024 filed a Memorandum of Appeal dated 14th March 2024 (Annexed hereto and marked "JMM2" is a copy of the Memorandum Appeal)
 - h. That, if the said threat referred to hereinabove is executed by the Respondent, then we stand to suffer great prejudice and our appeal will be rendered nugatory.
 - i. That I am advised by my advocates on record which advise I verily believe to be true that the Respondent stands to suffer no harm or prejudice should the orders sought herein be granted.
 - j. That I am willing to abide by reasonable terms that this Honourable Court may impose given the factual circumstances of this matter.
3. The respondent did not file any replying affidavit.
 4. The Court has reviewed and considered the application, the submission by counsel and the ruling intended to be appealed against. The issue seemed to be whether the appellant was justified to include deductions for SACCO from the decretal sum. The Court has perused the ruling of the trial court on the matter and noted that the court took the view that this issue was not included in the judgment and amounted to introduction of a counterclaim after the delivery of the judgment. The trial court therefore took the view that the issue did not constitute a ground for review.
 5. It is this Court's view that the issue whether the appellants were entitled to deduct outstanding SACCO loan from the decretal sum is a valid and arguable point to be considered on appeal. The Court will therefore grant the appellants unconditional stay of execution pending the hearing and determination of the intended appeal.
 6. Costs shall abide the outcome of the appeal.
 7. It is so ordered.

DATED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025

DELIVERED VIRTUALLY THIS 3RD DAY OF OCTOBER 2025

ABUODHA NELSON JORUM



PRESIDING JUDGE-APPEALS DIVISION

