

REPUBLIC OF KENYA
IN EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET

ELRC APPEAL NO. E007 OF 2023

(Before Hon. Lady Justice Maureen Onyango)

RAJESH PATEL T/A AKSHAR VENTURES APPELLANT

VERSUS

MICHAEL ANDIBA MABINDA

RESPONDENT

RULING

1. Vide an application dated 17th November, 2023 the Applicant/Respondent seeks the following orders:

a) *Spent.*

b) That the Honourable Court be pleased to order the release of the sum of Ksh.270,738 (two Hundred and Seventy Thousand Seven Hundred and Thirty Eight) to the Respondent's Advocate namely Wambua Kigamwa & Company Advocates which was deposited by the Appellant pursuant to the order made on 7th March, 2023.

- c) That the costs of the application be borne by the appellant.
2. The application is premised on the following grounds:
- i) That the Appellant was ordered to deposit $\frac{1}{2}$ of the decretal sum in court a condition for the grant of a stay of execution.
 - ii) That the event which was the subject of the deposit has already been concluded and in favour of the Respondent.
 - iii) That the Respondent requires the order to enable him to access the monies deposited.
3. The application is further supported by the affidavit Of Michael Andiba Mabinda, the Respondent/Applicant
4. The application is opposed by the Appellant who filed a replying affidavit of **Rajesh Patel** sworn on 30th January 2024 in which he deposes that vide an ex parte judgment in Eldoret Chief Magistrate's Court ELRC NO. E155 OF 2021 delivered on 2nd November, 2023 the Appellant was condemned unheard. That the Appellant has since lodged an appeal vide a Notice of Appeal and Memorandum of Appeal in which a ruling was delivered on 2nd November,

2023 which requires to be dispensed with hence the application by the Applicant is fundamentally defective, frivolous, vexatious, unmeritorious and constitutes a flagrant abuse of court process.

5. It is pleaded that the Appellant is a man of straw and has not demonstrated that he would be in a position to refund the decretal sum should the appeal succeed. He prays that the status quo be maintained.
6. The application was disposed of by way of written submission. The Applicant's submissions are dated 29th May, 2025.
7. The Respondent did not file submissions on the application and pretty much did not participate in the same after filing the replying affidavit.
8. I have considered the pleadings and submissions on record in respect of the application. The issue arising for determination is whether the sum deposited in a joint interest earning account in the names of counsel for both parties should be released to Wambua Kigamwa & Company Advocates for the Respondent/Applicant.

9. The reason given by the Applicant for filing the instant application is that the Appellant's application to this court and in the lower court were both dismissed. The Respondent/Applicant attached a copy of the lower court order dismissing the application by the Appellant as annex "C" of the supporting affidavit.
10. The appeal herein was in the ruling dated 24th May, 2024 found to have been filed out of time without leave. Consequently the application for stay of execution of the lower court orders was dismissed on grounds that it was premised on an appeal that was unsustainable for having been filed without leave of the lower (Trial) Court. This was because appeal from the ruling of the trial court did not lie as of right but with leave of the court as provided in Section 75 of the Civil Procedure Act and Order 43 Rule of the Civil Procedure Rules.
11. The foregoing being the case, there is no valid appeal before this court and there is therefore no reason to hold the money deposited in the joint account by the Appellant as security in the appeal.

12. The application dated 17th November, 2023 is accordingly allowed. This court consequently orders that:

Kshs. 270,738 deposited in the joint interest earning account in the names WAMBUA KIGAMWA & COMPANY ANDVOCATES and ALOO ROMANUS & COMPANY ADVOCATES pursuant to orders of this court dated 7th March, 2023 be released to WAMBUA KIGAMWA & COMPANY ANDVOCATES forthwith together with the interest earned.

13. There shall be no orders for costs of the instant application.

**DATED, DELIVERED AND SIGNED
THIS 16TH DAY OF OCTOBER, 2025.**

**M. ONYANGO
JUDGE**