University Academic Staff Union & 2 others v Kenyatta University (Cause 160 of 2009) [2025] KEELRC 3011 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 3011 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 160 OF 2009

SC RUTTO, J

OCTOBER 31, 2025

BETWEEN

UNIVERSITY ACADEMIC STAFF UNION .... 1ST CLAIMANT

LUCY MUGWE .... 2ND CLAIMANT

ELIZABETH ATIENO MENYA & ANDRONIKO OTEDO MENYA (ADMINISTRATORS OF THE ESTATE OF JOEL MENYA OTENDO - DECEASED) .... 3RD CLAIMANT

AND

KENYATTA UNIVERSITY .... RESPONDENT

RULING

1. The Respondent/Applicant has filed the instant application by way of a Notice of Motion dated 7th April 2025, seeking an order to lift and set aside the Warrants of Attachment and Sale of Moveable Property dated 20th March 2025 and the Proclamation of Attachment/Repossession/Distraint of Moveable Property dated 1st April 2025.
2. The Application is founded on the grounds set out on its face and supported by an Affidavit sworn on 7th April 2025 by Aaron Tanui, the Respondent/Applicant's Senior Legal Officer.
3. The Applicant avers that it has fully settled the decretal sums. That pursuant to a Ruling dated 10th March 2020, this Honourable Court awarded Kshs. 4,797,190.69 to the 1st Claimant (sic) and Kshs. 4,856,909.00 to the 2nd Claimant, subject to statutory deductions, together with costs and interest. By a subsequent Ruling dated 13th June 2024, the award on costs was set aside, with the direction that the Claimants be paid their dues plus interest. That the Applicant has since paid the 1st Claimant (sic) Kshs. 6,546,357.29 and the 2nd Claimant Kshs. 7,208,217.90, amounting in total to Kshs. 13,754,575.21.

4. The Applicant further contends that the Warrants of Attachment are defective and irregular in that they purport to recover Kshs. 9,308,016.00, representing an alleged balance of the decretal sum plus interest, together with auctioneer's fees of Kshs. 284,772.30. That further, the Warrants erroneously record payments of only Kshs. 10,421,255.09, disregarding the total sums actually paid and acknowledged by the Claimants on 6th February 2025. They also fail to account for statutory deductions under Section 49 of the *Employment Act* and the 10th March 2020 Ruling. Further, the Warrants include interest accruing over approximately 14 years, in breach of Section 4(4) of the *Limitation of Actions Act*, and also include taxed costs of Kshs. 276,261.50, which were set aside by the Court on 13th June 2024.

5. The Applicant has further contended that the Claimants failed to obtain a Notice to Show Cause as required by Order 22 Rule 18(1)(a) of the Civil Procedure Rules, despite seeking execution more than one year after the Decree dated 16th September 2020. On this score, the Applicant avers that had such a Notice been issued, it could have demonstrated that all sums payable to the Claimants had been settled, rendering execution unnecessary.

6. In response to the Application, the 2nd and 3rd Claimants filed a Replying Affidavit sworn on 4th May 2025 by the 3rd Claimant, Androniko Otedo Menya. Mr. Menya avers that vide an award dated 10th September 2009, the Court directed the Applicant to reinstate the Claimants with full benefits and seniority and to pay their salaries from the date of suspension without pay.

7. The Respondent did not comply but filed a judicial review in the High Court and subsequently an appeal (Court of Appeal Civil Appeal No. 222 of 2012), which was struck out for want of jurisdiction on 22nd March 2019.

8. During the pendency of the appeal, the 3rd Claimant passed away on 17th April 2015, rendering reinstatement untenable.

9. Subsequently, the Court, on 19th September 2019, directed submissions on the computation of the Claimants' dues. On 10th March 2020, the Court assessed the 2nd Claimant's dues at Kshs. 4,797,190.69 and the 3rd Claimant's at Kshs. 4,856,909, plus costs and interest. The Applicant challenged the ruling on 6th May 2021 regarding costs, and on 13th June 2024, the court ordered that costs were not payable.

10. Mr. Menya avers that between July and October 2024, correspondence between the parties' advocates reflected attempts to clarify and settle the decretal amounts. The Respondent partially paid the sums, with the last payments being Kshs. 5,010,147.70 and Kshs. 5,411,108.20 on 25th October 2024, acknowledged by the Claimants on 6th February 2025, with a reminder to pay the balance.

11. Upon the Respondent's continued default, the Claimants initiated execution on 5th March 2025, leading to the issuance of a Warrant of Attachment dated 20th March 2025 and a Notice and Proclamation of Movable Property dated 1st April 2025, which prompted the current application.

12. Mr. Menya avers upon advice of his counsel on record that Section 4(4) of the *Limitation of Actions Act* applies only where there has been no action from the date when judgment was delivered. That in this case, there have been multiple proceedings initiated by the Applicant post-judgment, making the interest claim valid. That the last payment on 25th October 2024 resets the limitation period, meaning six years had not lapsed by the execution date.

13. Mr. Menya further avers that the Applicant's contention that no Notice to Show Cause was issued is unfounded, as execution proceedings were ongoing since 2020, and the Respondent was aware and

did not dispute the process but requested the Claimants to halt the same and allow them to pay in installments.

14. In Mr. Menya's view, the Respondent's application to set aside the Warrants of Attachment is unmerited and appears aimed at further delay. He contends that they are entitled to enforce the judgment.

15. Mr. Menya concedes that the taxed costs of Kshs. 276,261.50 on the Warrants dated 20th March 2025 were erroneously included, as costs were not payable.

16. In conclusion, he clarifies that the total decretal amount paid by 5th March 2025 is Kshs. 13,353,066.95 (Kshs. 6,144,848.05 to the 2nd Claimant and Kshs. 7,208,217.90 to the 3rd Claimant), not Kshs. 10,421,255.09 as indicated in the Warrants of Attachment.

Submissions

17. The Application was canvassed by way of written submissions. The Court has duly considered the parties' respective submissions.

Analysis and Determination

18. Flowing from the record, the Court has isolated the following issues for determination:

    a. Whether the Claimants' claim for arrears of interest is time-barred by dint of Section 4(4) of the *Limitation of Actions Act*;

    b. Whether the warrants of attachment are defective; and

    c. Whether the Claimants' failure to issue a notice to show cause renders the execution process invalid.

Time bar on the claim for interest?

19. The Applicant contends that it has fully settled the decretal amount and indeed, overpaid the Claimants. The Claimants, however, dispute this position and maintain that the Applicant remains in default.

20. The crux of the dispute lies in the issue of interest. On its part, the Applicant relies on Section 4(4) of the *Limitation of Actions Act*, arguing that no arrears of interest can be recovered on a judgment after six years from the date the interest became due. It asserts that the warrants of attachment include interest calculations spanning from 10th September 2009 to 25th October 2024, approximately 14 years from the date of judgment, contrary to Section 4(4) of the *Limitation of Actions Act*. In support of its position, the Applicant cites the decision in Assia Pharmaceuticals Ltd v Kenya Alliance Insurance Co. Ltd [2021] KEHC 19 (KLR).

21. The Claimants take an opposing view, asserting that their claim is not time-barred since they are not filing a new suit but merely executing an existing decree founded on a continuing and acknowledged obligation, including interest. To this end, the Claimants invoke Section 23(3) of the *Limitation of Actions Act*, arguing that the Respondent made part payments as recently as 25th October 2024 and repeatedly acknowledged the debt in writing. Consequently, they maintain that the execution commenced on 5th March 2025 was well within six years of the last part payment, rendering their claim for interest valid. To fortify their position, they rely on the decision in Republic v Attorney General & Another; Ex Parte Sarah Awinja Babu & Another [2019] KEHC 2817 (KLR).

22. Section 4(4) of the *Limitation of Actions Act* sets a distinct six-year limitation period for recovering arrears of interest on a judgment debt, commencing from the date the interest became due. The question then arises: whether Section 23 (3) of the same Act creates an exception whereby part payment by the judgment debtor resets the limitation period?

23. To address this question, it is necessary to examine the provisions of Section 23(3) of the *Limitation of Actions Act* and determine its effect. The Section is couched as follows: -

> "Where a right of action has accrued to recover a debt or other liquidated pecuniary claim...and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment: Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt."

24. My interpretation of Section 4(4), read with Section 23(3) of the *Limitation of Actions Act*, is that the six-year limitation period for arrears of interest runs strictly from the date the interest became due and is not extended by subsequent payments. In this context, although payment of interest may renew the limitation period for the principal sum, it does not allow recovery of interest arrears accruing beyond six years.

25. Indeed, the proviso to Section 23(3) expressly provides that payment of part of the interest due does not extend the limitation period for recovering the remaining interest, and that any payment of interest is deemed to be a payment towards the principal debt.

26. Further to the foregoing, the record bears that todate, the Applicant's payments have exceeded the principal judgment sum. Consequently, the Claimants' pursuit now relates solely to interest.

27. In view of the foregoing, the Court finds that the Applicant's payments towards settlement of the decree did not reset the limitation period concerning the interest accrued on the principal judgment. Accordingly, the Claimant's claim for arrears of interest is time-barred by dint of Section 4(4) of the *Limitation of Actions Act*.

Whether the warrants of attachment are defective

28. The Applicant challenges the warrants of attachment dated 20th March 2025 on the basis that they include taxed costs, despite the Court having ruled that no such costs were payable to the Claimants.

29. In their Replying Affidavit, the Claimants concede that the inclusion of taxed costs in the warrants of attachment was an error.

30. Consequently, it is evident that the warrants of attachment do not properly reflect the terms of the Court's decree. As it stands, Warrants issued in execution must accurately mirror the contents of the decree.

31. Seeing that the Court's judgment did not award any costs, it follows that the warrants of attachment dated 20th March 2025 are defective as they bear an element of taxed costs.

Whether the Claimants' failure to issue a notice to show cause renders the execution process invalid

32. It is undisputed that the Claimants did not issue a notice to show cause to the Applicant before commencing the execution process. Order 22 Rule 18(1)(a) of the Civil Procedure Rules, 2010

expressly provides that where an application for execution is made more than one year after the issuance of a decree, the court must issue a notice to show cause to the person against whom execution is sought.

33. The Applicant has argued that the Claimants' failure to comply with Order 22 Rule 18(1)(a) renders the entire execution process irregular and unlawful.

34. The Claimants, however, contend that since the Applicant participated in post-judgment proceedings and continuous correspondence, failure to issue the notice did not occasion any prejudice.

35. The record bears that approximately five years elapsed between the date of the decree and the commencement of execution.

36. It therefore follows that, pursuant to Order 22 Rule 18(1)(a), the Claimants were required to ensure that a notice to show cause was issued to the Applicant before commencing execution proceedings.

37. In this Court's view, the requirement under Order 22 Rule 18(1)(a) is not a mere procedural formality but a crucial safeguard ensuring that a party is accorded the right to be heard or to demonstrate that the decree has been fully or partly satisfied before execution measures are taken. Indeed, the notice to show cause under this provision serves to provide an opportunity to the judgment debtor to explain why execution should not proceed.

38. While Article 159(2)(d) of *the Constitution* requires courts to administer justice without undue regard to procedural technicalities, it does not excuse non-compliance with essential procedural requirements. (see the case of Raila Odinga & 5 Others v IEBC & Others [2013] eKLR).

39. In the final analysis, the Court finds merit in the Application dated 7th April 2025, which is hereby allowed. Accordingly, the Warrants of Attachment dated 20th March 2025 and the Proclamation Notice dated 1st April 2025 issued by Rubitch Auctioneers are hereby lifted and set aside.

40. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2025

....

STELLA RUTTO

JUDGE

In the presence of:

Ms. Kerubo instructed by Mr. Kiprono for the 2nd and 3rd Claimants/Respondents

No appearance for the Respondent/Applicant

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty

of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE