

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC CAUSE NO. E422 OF 2022**

*(Before Hon. Lady Justice Hellen Wasilwa, J)*

**ANN WANGUI MUCHUNU.....**  
**.....CLAIMANT**

**VS**

**NRS SACCO SOCIETY**  
**LIMITED.....RESPONDENT/APPLICANT**

**RULING**

1 The Respondent/Applicant filed a Notice of Motion dated 16<sup>th</sup> July 2025 seeking orders that: -

1. *spent*
2. *This Honourable Court be pleased to issue a temporary order of injunction barring the Betabase Auctioneers, whether by themselves, their employees, agents, servants or officers from executing the judgement and/or decree herein against the Applicant pending hearing and determination of this application.*
3. *This Honourable Court be the pleased to recall, cancel, set aside and/or revoke any decree which the Respondent and/or his advocates is purporting to base the execution process on; and order that the decree be redrawn in compliance with the law.*
4. *This Honourable Court be the pleased to recall, cancel, set aside and/or revoke the warrants of*

*attachment and proclamation of attachment that were issued to Betabase Auctioneers on or about 4<sup>th</sup> July 2025.*

### **Respondent/Applicant's Case**

- 2 The Applicant avers that the court entered judgment in this matter on 16<sup>th</sup> December 2024 and awarded the Claimant/Respondent a sum of Kshs 1,103,412 less statutory deductions.
- 3 In compliance with these terms, the Applicant proceeded to pay the decretal sum and its advocates forwarded the payments to the Respondent's advocates. However, the said advocates declined the cheque on the basis that the amounts were deducted despite the judgement being clear on statutory deductions.
- 4 The Applicant avers that on 4<sup>th</sup> July 2025, the Respondent through Betabase Auctioneers served upon it proclamation of attachment, warrant of attachment of movable property and warrant of sale of property in execution of a decretal sum indicated to be Kshs. 1,419,813.14. The proclamation of attachment listed the Applicant's valuable assets critical to their operations being the company's motor vehicles, office computers, office furniture among other things.
- 5 The Applicant avers that the on 14<sup>th</sup> July 2025, the auctioneers attached its properties despite executing an irregular decree necessitating it to draw a cheque of kshs

300,000 in a bid to preserve its assets which had been maliciously undervalued.

- 6 It is the Applicant's case that the Respondent's advocates never moved the court to either set aside the judgement and/or appeal against the judgement. Instead, they have maliciously resorted to execute for the full judgement without factoring in the deductions ordered by the court.
- 7 The Applicant avers that the Respondent's advocates did not serve upon its advocates a draft decree for approval or even any decree and demand for payment before commencing the execution process through the said Auctioneers. Therefore, the execution was irregular for failure to comply with basic requirements of the law on service of a draft decree upon a judgment debtor for approval or even service of final decree and demand for payment before commencing execution process.
- 8 The Applicant avers that it has been willing and demonstrated its will to settle the rightful amounts payable, therefore, it is necessary that there be stay of execution to allow this court assess the payable amounts as per the judgement issued on 16<sup>th</sup> December 2024.
- 9 It is the Applicant's case that if stay of execution is not granted pending hearing and determination of this application, the Respondent shall continue with execution occasioning the Applicant substantial loss by attachment

and sale of its high value items which have been deliberately undervalued.

- 10 The Applicant avers that its application has been made without unreasonable/inordinate delay.

### **Claimant/Respondent's Case**

- 11 In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 19<sup>th</sup> September 2025.
- 12 The Respondent avers that this court's judgment entered on 16<sup>th</sup> December 2024 in her favour for Kshs. 1,103,412 plus costs and interest at court rates; and such an award is subject to statutory deductions as provided for by Section 49 of the Employment Act.
- 13 The Claimant/Respondent avers that her advocates wrote to the Respondent/Applicant's advocates with requesting for payment of the award but the same was ignored.
- 14 She avers that the Respondent/Applicant's forwarded a cheque number 000239 for Kshs. 546,575.00 purporting it to be for full and final payment. Her advocates on record declined to receive and actually returned the said cheque for the reason that the deductions alleged to be made were way more than the ordinary statutory deductions allowed by law.

- 15 It is the Claimant/Respondent's case that the Respondent/Applicant not only deducted the allowed statutory deductions but also included the balance of a loan she had borrowed a little earlier.
- 16 The Claimant/Respondent avers that the Respondent/Applicant did not have the right to include deduct the loan which she is still servicing primarily for the fact that it did not form part of the facts in issue in the suit. Further, there was no counter-claim and/or set-off filed by the Respondent/Applicant alongside their response so as to properly introduce the issue of the outstanding loan facility which I was still servicing in any event.
- 17 The Respondent avers that her advocates tried in vain to ask that this anomaly be corrected and that her full award be paid. Additionally, her advocates on record requested for a breakdown of the deductions effected which has never been presented to date.
- 18 It is the Respondent's case that the Applicant has acted in a callous and malicious way by proceeding to file a suit in the Small Claims Court to recover the same amount of money they deducted from her award without making a full disclosure thereof. They effected the deduction on 6<sup>th</sup> March 2025 and proceeded to file that suit to receive the same amount on 20<sup>th</sup> March 2025.
- 19 The Respondent avers that the actions of the Applicant championed by their advocates amount to a blatant abuse

of the court's process and a great affront to justice in this matter.

- 20 The Respondent avers that her advocates on record proceeded to tax the awarded costs in court which process led to the issuance of legitimate warrants of attachment through a clear, legitimate and fair judicial process. She contends that any other allegation by the Applicant is mere delaying tactics and an attempt to frustrate her.
- 21 It is the Respondent's case that staying the execution process will prejudice her given that she is sickly and on monthly drugs for various serious conditions and the denial of this right has exacerbated her condition.
- 22 The Respondent urged the court to reinstate the warrants of attachment and order the Applicant to pay her full dues as awarded by court in a clear and transparent manner. She also stated that the Applicant's on record should be penalized for misleading their clients and this court deliberately and knowingly.

### **Petitioner/Applicant's Submissions**

- 23 The Applicant submitted on five issues: whether the execution process commenced by the Claimant is irregular and unlawful; whether the Applicant has met the threshold for stay of execution; whether the Court should exercise its inherent powers to recall and set aside the irregular decree and warrants; and whether the Applicant is entitled

to set-off of Kshs. 217,194.86 awarded in its favour in SCCCOMM/E42770/2025.

- 24 On the first issue, the Applicant submitted that the Respondent commenced execution without serving a draft decree for approval as required under Order 21 Rule 8 of the Civil Procedure Rules, 2010, and based the process on a figure not supported by the judgment. The judgment delivered on 16<sup>th</sup> December 2024 awarded Kshs. 1,103,412 less statutory deductions, yet execution has been initiated for Kshs. 1,419,813.14, a clear variance and overstatement.
- 25 It is the Applicant's submission that execution founded on an irregular and unapproved decree is null and void. It cited ***Wachira Karani v Bildad Wachira [2016] eKLR***, the court held that: *"Execution based on an irregular decree is a nullity and must be recalled to preserve the integrity of the judicial process."* The Applicant thus prays that the decree and resultant warrants issued on 4<sup>th</sup> July 2025 be recalled, cancelled and set aside.
- 26 On the second issue, the Applicant submitted that it stands to suffer substantial loss as the attached property comprises motor vehicles, computers and office equipment crucial to its operations. Their sale would cripple business operations and cause irreparable harm. Substantial loss is what must be prevented by preserving the subject matter in dispute pending appeal or further orders.

- 27 It is the Applicant's submission that the application was filed timeously upon issuance of the proclamation on 4<sup>th</sup> July 2025, demonstrating promptness and good faith. It has already paid Kshs. 300,000 to preserve its assets and is ready to comply with any security terms the court may direct. Therefore, it has satisfied all the requirements for the grant of stay pending determination of this application.
- 28 On the third issue, the Applicant submitted that the power of this court to recall and correct irregular processes flows from Section 3A of the Civil Procedure Act, which preserves the court's inherent jurisdiction to make orders necessary to achieve the ends of justice and prevent abuse of process. The Respondent's conduct of rejecting lawful payment, inflating figures, and commencing execution without service of a valid decree amounts to abuse of process that this court should not countenance.
- 29 The Applicant submitted that it is just and equitable that this court sets aside the irregular decree and warrants and orders that the decree be redrawn in accordance with the judgment delivered on 16<sup>th</sup> December 2024. It cited ***Republic v District Land Registrar, Uasin Gishu & Another Ex parte Joshua Chelelgo Kulei [2018] eKLR***, the Court affirmed that: *"Inherent power exists to prevent injustice or abuse of the process of the court where the law is silent."*

- 30 On the final issue, the Applicant submitted that it has obtained a lawful and subsisting judgment in the Small Claims Court at **Nairobi, Case No. SCCCOMM/E42770/2025 - Ann Wangui Muchunu v. NRS SACCO Society Limited**, where judgment was entered in favour of NRS SACCO for Kshs. 217,194.86. The existence of this judgment establishes reciprocal monetary obligations between the same parties, thus entitling the Applicant to a set-off of the decretal sum due in this cause.
- 31 The Applicant submitted that the principle of set-off is recognized both at common law and under Order 8 Rule 2 of the Civil Procedure Rules, which provides that; *“A defendant in an action may set off or set up by way of counterclaim any right or claim, whether arising out of the same transaction or not, and such set-off shall have the same effect as a cross-action.”* Courts have consistently held that set-off is available where there are mutual debts between the same parties capable of being ascertained, where there exist mutual debts between the same parties, the proper course is to set one off against the other and determine the net balance payable.
- 32 The Applicant submitted that this court to take judicial notice of the judgment in SCCCOMM/E42770/2025, and in the interests of justice, set off the sum of Kshs. 217,194.86 from any amount found payable to the Claimant in this cause. This approach would avoid multiplicity of proceedings, ensure fairness, and give

effect to the overriding objective under Sections 1A and 1B of the Civil Procedure Act, which require expeditious and proportionate resolution of disputes.

### **Claimant/Respondent's Case**

- 33 The Respondent submitted that her advocates wrote to the Applicant advocates on various occasions requesting for payment of the award but this was initially ignored. Eventually, they sent a cheque number 000239 for Kshs. 546,575.00 purporting it to be for full and final payment. The said cheque was declined and actually returned for the reason that the deductions alleged to be made were way more than the ordinary statutory deductions allowed by law. The Applicant not only deducted the allowed statutory deductions but also included the balance of a loan that Claimant/Respondent had borrowed a little earlier.
- 34 The Respondent submitted that the Applicant did not have the right to include the deduction for a loan that she was still faithfully servicing primarily for the fact that it did not form part of the facts in issue in the suit. Further, there was no counter-claim and/or set-off filed by the Applicant alongside their response so as to properly introduce the issue of the outstanding loan facility which she was still servicing in any event.
- 35 The Respondent submitted that various requests for the explanation and provision of the breakdown for the

intended deductions were met with resistance. The Applicant refused to make the full payment despite various reminders, leading to the taxation of the awarded costs in court, which process led to the issuance of legitimate warrants of attachment which were issued through a clear, legitimate and fair judicial process. Any other allegation by the Applicant is mere delaying tactics and an attempt at frustrating the Respondent from realizing the fruits of her legitimate judgment, nearly a year down the line.

- 36 The Respondent submitted that she has been faithfully servicing the loan. Linking the refusal to pay her decretal award to a loan she has been paying back is such an injustice to her given that she has patiently waited for her case to be heard. At the moment, she is sickly and on monthly drugs for various serious conditions and the denial of this right has exacerbates her condition unnecessarily.
- 37 The Respondent submitted that the Applicant has not made a full disclosure of the material facts before this Court and is enjoying interim orders at the expense of the Respondent, which orders are so punitive and injurious that she has had to seek medical attention out of the frustration faced.
- 38 It is the Respondent's submission that the stay orders ought to be vacated, the application dismissed and the warrants issued reinstated to enable her pursue judgment.

Further, the Applicant who filed this application has not bothered to prosecute it since they obtained stay orders. This clearly demonstrate that there was not a pursuit of justice but just an attempt at frustrating the Claimant/Respondent

- 39 The Respondent submitted that in the alternative, this application be dismissed and all orders issued therein vacated. Further, the warrants of attachment issued to be reinstated forthwith to enable the Claimant pursue justice avoidance and is an abuse of court process.
- 40 I have considered all the averments and submissions of the parties. The applicant's contention is that the warrants of attachment have errors and have not considered the amounts already paid. This is therefore a case of reconciliation of figures which the Deputy Registrar can do to allow execution to proceed.
- 41 I therefore direct that the warrants of attachment in place be recalled and be placed before the Deputy Registrar to issue fresh warrants if need be based on the correct figures. Costs in the petition.

**Dated, Signed and Delivered Virtually at Nairobi  
this 3<sup>rd</sup> Day of December 2025.**

**HELLEN WASILWA  
JUDGE**

ORIGINAL