

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

APPEAL NO. E015 OF 2023

R.K. SANGHANI APPELLANT

VERSUS

EDWARD KIPWAMBOK ROTICH RESPONDENT

RULING

The respondent, Edward Kipwambok Rotich, filed an application dated 23 September 2025 seeking that the funds deposited in the joint account held by the parties for the sum of Ksh. 306,075, a sum of Ksh. 135,118.44 be released to his advocates.

The respondent filed the Supporting Affidavit of Clemence Masinde, advocate, and avers that the court has determined the appeal and awarded the respondent Ksh. 46,143.30 with interest from 21 September 2023 to 21 September 2025, a period of 719 days at Ksh. 12,725.44. The court awarded the lower court's costs in the amount of Ksh. 76,250 total due Ksh. 135,118.44.

Masinde Advocate avers that, following the lower court's judgment, the appellant filed an appeal and deposited the security funds in a joint interest-earning account for Ksh. 306,075. Upon the determination of the appeal, the respondent was awarded Ksh. 46,143.30 with interests from 21 September 2023. The total sum due is Ksh. 135,118.44, which should be paid from the joint interest earning account held at ABSA Bank Kenya PLC, Nkurumah Road Branch, and Account No. 2048646924.

In reply, the appellant filed the Replying Affidavit of Bosire Jared, an advocate, who avers that, following the judgment herein, the court directed each party to bear its own costs. The lower court judgment was set aside. The respondent cannot assess its costs before filing the Bill of Costs for court assessment. The instant application has no merit and should be dismissed with costs.

Determination

On 13 February 2023, judgment was delivered in Mombasa CMELRC No.319 of 2020. Dissatisfied, the appellant filed the instant appeal on the ground that the trial court erred in finding that there was unfair termination of employment and in awarding the respondent compensation, notice pay, pay for June 2020, severance pay, underpayment, leave pay, costs, and interests.

The court delivered judgment on 21 September 2023 with the following Orders and awards:

The appeal is partially successful.

- a) *Compensation Ksh. 15,689.80.*
- b) *Notice pay Ksh.7, 853.10.*
- c) *Annual leave Ksh.14, 679.*
- d) *Certificate of service.*
- e) *Each party to bear own costs.*

On the claim for costs and interest from 21 September 2023 to 21 September 2025, a period of 719 days, the respondent contends that the trial court awarded costs and interest. The security and funds deposited to secure the appeal at ksh. 306,075 should be released to the respondent to this extent, including the sum of Ksh. 135,118.44.

In assessing the awards by the trial court, the court addressed the following:

- a) Notice pay was correctly assessed at ksh.7, 930.40.
- b) Compensation awarded at 12 months was reduced to two months' gross pay at Ksh. 15,689.80.
- c) Salary arrears awarded at ksh.7, 853.10.
- d) Annual leave Ksh.14, 679.
- e) Certificate of service.

Ultimately, the appeal was found partially successful. Each party is to bear its own costs. This is all-inclusive for the appeal and the lower court.

The respondent cannot claim costs and interests that were not granted in the appeal.

The security was deposited to ensure the funds' availability at the appeal hearing and determination. Costs cannot accrue outside the appeal.

The response shall be paid from the joint account held by the parties to this extent only: the judgment sum, and each party shall bear its costs.

Application dated 23 September 2025 is without merit and is hereby dismissed. Each party bears its costs.

Delivered in open court at Mombasa, this 4th day of December 2025.

M. MBARŪ
JUDGE

In the presence of:

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