

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT KERICHO
CAUSE NUMBER 13 OF 2020**

BETWEEN

JOHN KIPYEGO BIIYCLAIMANT

VERSUS

KENYA NATIONAL UNION OF NURSES RESPONDENT

RULING

1. Judgment in this Claim, is the subject of an Appeal pending at the Court of Appeal Nakuru, Appeal Number 74 of 2023.
2. Execution of the Judgment was stayed, on the condition that the decretal sum is deposited in Court.
3. The record indicates that the decretal sum was deposited, and on 29th June 2023, the Court marked the file as closed.
4. The presumption would be that the file would only be re-opened, after the Appeal was heard and determined, to enable the Parties make the necessary applications, depending on the outcome of the Appeal.

5. The Claimant nonetheless, filed an application dated 13th November 2025, under certificate of urgency, seeking release of the decretal sum.
6. On 14th November 2025, the Court directed that the application was not suited for *ex-parte* hearing. The Claimant was directed to serve the application, and a suitable hearing date to be assigned at the Registry.
7. Parties next appeared before the Court, on 20th November 2025, for mention. The Respondent asked for 21 days to file response to the application, which was granted.
8. Hearing was scheduled for 27th January 2026.
9. The Respondent did not attend Court on 27th January 2026, and the Claimant informed the Court, that there was no response filed. The Court was prayed to allow the application, and allowed the application, in the absence of the Respondent, and in the absence of any response placed on record.
10. The Respondent made an application dated 2nd February 2026, asking the Court to set aside the orders made on 27th January 2026, releasing the decretal sum.

11. Although there is no reasonable explanation, on the Respondent's failure to respond to the application, and to attend Court when required, it is not disputed that the Appeal, at the Court of Appeal is pending.
12. It is also common ground that the Respondent was granted orders of stay of execution pending appeal, on the condition that the decretal sum is deposited. The record confirms that deposit was made.
13. The Court stayed release of the decretal sum on 11th February 2026, pending delivery of the Ruling herein.
14. Parties confirmed filing and exchange of submissions, at the last appearance before the Court, on 11th February 2026.

The Court Finds: -

15. The Respondent shoulders blame for not responding to the application for release of the decretal sum, and for not attending Court, when the release orders issued.

16. That said, the Claimant has not discounted the fact that deposit was made as security pending appeal, and the relevant Appeal is pending hearing and determination.
17. There was no reason to reactivate the trial proceedings, while the Appeal is pending. The orders recorded on 29th June 2023, closing the file, ought not to have been disturbed, until the Appeal is finalized.
18. Consequently, the Court shall allow the application filed by the Respondent dated 2nd February 2026; and, set aside the orders releasing the decretal sum, made on 27th January 2026.
19. The Court shall not entertain any other applications, until it is presented with the final orders of the Court of Appeal, in Appeal Number 74 of 2023.

IT IS ORDERED: -

- a. *The orders made by the Court on 27th January 2026, releasing the decretal sum to the Claimant, are hereby set aside.*

b. No other application shall be entertained by this Court, until the Court is supplied with the final orders from the Court of Appeal, on the pending Appeal.

c. Costs in the cause.

Dated, signed and delivered electronically at Kericho, this 31st day of March 2026.

James Rika
Judge

