

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC CAUSE NO. E614 OF 2020

(Before Hon. Lady Justice Hellen Wasilwa, J)

DR. ALLAN PAMBA.....
.....CLAIMANT

VS

**THE KENYA HOSPITAL ASSOCIATION/
THE NAIROBI HOSPITAL.....1ST
RESPONDENT**
**DR. IRUNGU NDIRANGU.....2ND
RESPONDENT**

RULING

- 1 The Respondents/ Applicants filed a Notice of Motion dated 11th December 2025 seeking orders THAT: -
1. Spent
 2. *The court be pleased to extend the time within which the respondents are to deposit Kshs 27,000,000 in a joint interest earning account of the advocates in accordance with the court's orders of 13th November 2025.*
 3. *An order directing the immediate release of the security funds currently deposited in court to the joint interest-earning account to be opened by the parties in accordance with their prior agreement.*

4. That the costs of this application be in the cause.

Respondents/Applicants' Case

- 2 The Respondents/Applicants further filed Further Affidavits dated 13th February 2026 and 5th March 2026 in support of the Notice of Motion application.

- 3 In respect to the notice of motion application, the Applicants aver that on 13th November 2025, Radido J, as he then was delivered a ruling granting stay of execution on express conditions, namely: payment of Kshs. 9,000,000 to the Claimant; deposit of Kshs. 27,000,000 as security in a joint interest-earning account in the names of the parties' advocates within twenty-one (21) days; agreement on the bank within fifteen (15) days; and in default of such agreement, deposit of the said sum in Court within the stipulated period

- 4 It is the Applicants' case that in compliance with the first limb of the Court's order, they effected payment of Kshs. 9,000,000 to the Claimant's advocates on 19th November 2025, less statutory deductions. The said deductions, including PAYE in the sum of Kshs. 3,150,000, were lawfully effected pursuant to section 49(2) of the Employment Act, 2007 and section 3(2) of the Income Tax Act, which require that compensation tied to earnings be subjected to statutory deductions.

- 5 The Applicants aver that following the said payment, the parties engaged in the process of identifying a suitable financial institution for purposes of opening the joint interest-earning account and considered deposit rates from various banks, ultimately agreeing on Stanbic Bank Limited, which offered a rate of 7.77% per annum.
- 6 The Applicants aver that on 26th November 2025, their advocates duly completed and forwarded the account opening forms to the Claimant's advocates for execution. A reminder was subsequently issued on 28th November 2025 seeking expeditious execution of the said documents, however, the Claimant's advocates, vide a letter dated 3rd December 2025, declined to execute the forms unless the full sum of Kshs. 9,000,000 was paid to the Claimant
- 7 The Applicants contend that the Claimant's action was contrary to the Employment Act and the Income Tax Act, and it effectively stalled the opening of the joint account.
- 8 It is the Respondents' case that the failure to deduct tax would expose them to criminal liability under section 94(1) of the Tax Procedures Act, 2015 as well as financial sanctions under sections 37(5) and 37A of the Income Tax Act.
- 9 The Applicants assert that faced with the imminent lapse of the timelines and keen to remain compliant, they proceeded to deposit the sum of Kshs. 27,000,000 in Court on 4th December 2025, being the 21st day from the date of the ruling. They contend that this constituted full

compliance with the alternative mode expressly provided in the Court's order and effectively preserved and perfected the stay of execution.

- 10 They contend that the allegation that the stay lapsed is factually and legally untenable, as the Court expressly provided for deposit in Court as an alternative where the joint account mechanism became impracticable. Therefore, the Claimant cannot benefit from a delay occasioned by his own refusal to execute the account-opening documents.
- 11 The Applicants aver that the instant application was filed solely to seek directions to facilitate the implementation of the Court's original intention that the security be held in a joint interest-earning account, and not to revive a lapsed stay. They contend that there exists no timeline prescribed for seeking such consequential or administrative directions.
- 12 They further aver that following the filing of the application, the parties' advocates engaged and eventually agreed to proceed with the opening of the joint account. The Claimant's advocates executed the account-opening forms on 17th December 2025, and the joint account was subsequently opened on 16th January 2026 at Stanbic Bank Limited, Waiyaki Way Branch in the joint names of the parties' advocates.
- 13 The Applicants state that on 27th January 2026, their advocates forwarded the account details together with a draft consent to facilitate the release and transfer of the

Kshs. 27,000,000 deposited in Court to the joint account. A reminder was sent on 9th February 2026.

- 14 It is the Applicants' case that by a letter dated 11th February 2026, the Claimant's advocates declined to execute the consent unless they first settled the costs of the suit as awarded in the judgment delivered on 19th June 2025. This position is contrary to the Court's orders of 13th November 2025, which did not make payment of costs a condition attached to the stay orders nor to the opening or operation of the joint interest-earning account.
- 15 They assert that the issue of costs remains contested, as they have challenged the taxation through a reference, and therefore the introduction of payment of costs as a precondition is extraneous, unjustified, and not anchored in the Court's orders.
- 16 The Applicants contend that the Claimant has acted in bad faith by shifting positions initially refusing to execute account-opening forms, subsequently agreeing to open the account, and thereafter refusing to execute the consent for transfer unless costs are paid thereby frustrating implementation of the Court's orders.
- 17 It is the Applicants' case that the Claimant's conduct has unnecessarily prolonged implementation of orders that were otherwise straightforward and mutually beneficial.
- 18 They aver that the continued retention of the sum of Kshs. 27,000,000 in Court is prejudicial to both parties as the funds are not earning interest, despite the existence of a

duly opened joint interest-earning account. They assert that had the funds been placed in the agreed account at a rate of 7.77% per annum, they would earn approximately Kshs. 2,079,000 annually, which is now being lost.

- 19 The Applicants therefore contend that it is in the interest of justice that the Court grants the orders sought in the instant application and directs the immediate release and transfer of the security funds from Court to the duly opened joint interest-earning account.

Claimant/Respondent's Case

- 20 In opposition to the notice of motion application, the Claimant/Respondent filed a replying affidavit dated 23rd February 2026.

- 21 The Respondent agrees that on 13th November 2025, this Court granted the Applicants a conditional stay of execution directing them to pay the sum of Kshs. 9,000,000 and to deposit Kshs. 27,000,000 in a joint interest-earning account within twenty-one (21) days.

- 22 The Respondent avers that the Applicants failed to comply with the express terms of the Court's orders and instead acted in bad faith by depositing the sum of Kshs. 27,000,000 in Court out of time and not in a joint interest-earning account as directed by the Judge and by refusing to pay the taxed costs despite the fact that there are no stay of execution orders on costs and the demand for

payment of the taxed costs was indicated in his letter dated 11th February, 2026 which has been ignored.

23 It is the Respondent's case that the Applicants are seeking equitable reliefs however they are guilty of inequity and not deserving of the reliefs sought since the Applicants have failed to pay the costs as taxed by the Taxing Officer.

24 He contends that the Court's orders were clear and self-executing, requiring the security to be deposited in a joint account by consent of both the parties, failing which the stay would lapse.

25 It is the Respondent's contention that the Applicants failed to meet the 21-day timeline, which lapsed on 3rd December 2025, and therefore the conditional stay of execution automatically expired. He asserts that the deposit made thereafter did not cure the non-compliance and could not revive the lapsed orders.

26 The Respondent contends that, upon lapse of the stay orders, there remained no valid orders capable of being varied or enforced, rendering the present application incompetent and liable to be struck out.

27 He avers that the application dated 11th December 2025 was filed eight (8) days after expiry of the conditional stay of execution orders of 3rd December, 2025 and therefore there is inordinate delay in filing the application which is made in bad faith, is an afterthought and constitutes an abuse of the Court process.

28 The Respondent contends that the instant application is a veiled attempt to reinstate the lapsed stay orders through the back door and to delay his enjoyment of the fruits of judgment.

Respondents/Applicants' Submissions

29 The Applicants reiterated the facts of their case and submitted that the material facts giving rise to the present dispute are not in contention.

30 The Applicants submitted that in ***Butt v Rent Restriction Tribunal[1979] eKLR*** the Court of Appeal held that the purpose of a stay is to preserve the subject matter in dispute so that the appeal, if successful, is not rendered nugatory. Security is therefore meant to guarantee due performance, not to punish the judgment debtor.

31 He further relied on ***Focin Motorcycle Co. Limited v Ann Wambui Wangui & another [2018] eKLR*** wherein the Court of Appeal emphasized that security serves as a safeguard to ensure due performance of the decree, and must not be applied in a manner that causes unnecessary prejudice to either party.

32 It is the Applicants' submissions that they have already complied with the condition on security by depositing the sum of Kshs. 27,000,000 in Court and that the only outstanding issue is the proper placement of the said security in line with the Court's original intention.

- 33 They argued that the continued retention of the said funds in Court serves no legitimate legal purpose, as the funds do not earn interest and thereby prejudice both parties.
- 34 It was submitted that security must be reasonable and proportionate and should not operate oppressively, and that retaining such a substantial sum in a non-interest-earning account defeats the equitable balance underpinning stay orders.
- 35 The Applicants further submitted that there exists no legal or equitable basis for preventing the transfer of the funds to the duly opened joint interest-earning account, and that failure to do so undermines the very purpose of the conditional stay, which is preservation of the decretal sum in a manner fair to both parties.
- 36 On whether the stay of execution lapsed automatically, the Applicants submitted that the Respondent's contention that the orders were self-executing and lapsed on 3rd December 2025 is legally and factually incorrect. They argued that the ruling of 13th November 2025 expressly provided an alternative mode of compliance, namely that in default of agreement on the bank, the security was to be deposited in court within 21 days.
- 37 They submitted that pursuant to Order 50 Rule 7 of the Civil Procedure Rules, 2010 and Section 57(a) of the Interpretation and General Provisions Act, the period prescribed by court lapsed on 4th December 2025. It is not

in dispute that the respondents complied precisely with this fall back mechanism by depositing the sum of Kshs 27,000,000 in court on 4th December 2025, being the 21st day from the date of the ruling.

- 38 The Applicants argued that the deposit in Court constituted strict compliance with the Court's order and not breach thereof, and that the Respondent cannot approbate and reprobate by frustrating execution of the primary mode and thereafter alleging non-compliance when the respondents invoked the alternative expressly sanctioned by the court.
- 39 It is the Applicants' submission that the Respondents preserved the decretal sum exactly as intended by the court. The stay therefore did not lapse.
- 40 They submitted that there are no orders capable of variation because the stay allegedly expired; this submission is misconceived. The security ordered by the court remains intact and under the custody of the court precisely because of the orders issued on 13th November 2025.
- 41 The Applicants submitted that courts retain inherent jurisdiction to supervise and perfect compliance with their own orders so as to achieve their intended purpose. Under rule 80 of the Employment and Labour Relations Court (Procedure) Rules, the court may issue such consequential directions as are necessary for the ends of justice. Directing transfer of the funds into the agreed joint

interest-earning account is therefore not revival of expired orders, but completion of an already ordered process.

- 42 On the allegation of delay, it was submitted that the instant application was not filed out of time. The Applicants argued that the application does not seek a fresh stay but merely seeks implementation of the Court's original intention regarding placement of security.
- 43 They submitted that upon depositing the funds in court to avoid technical default, the respondents moved the court seeking directions on proper placement of the security. Such conduct demonstrates diligence, not indolence. An interval of 7 days, particularly where compliance had already been secured through deposit in court, cannot by any legal standard amount to inordinate delay.
- 44 On the real issues before the court, the Applicants submitted that the Respondent's attempt to shift the dispute into a technical contest about timelines. The real issue before court remains narrow and practical, that is, whether funds already preserved as security should remain idle in court earning no interest or be placed in the agreed joint interest-earning account for the benefit of both parties. No prejudice whatsoever has been demonstrated by the Claimant/Respondent if the funds earn interest pending appeal.
- 45 It is the Applicants' submission that continued retention of Kshs 27,000,000 in a non-interest-earning account

unjustly diminishes the value of the security and defeats the equitable balance underpinning stay orders.

Claimant/Respondent's Submissions

- 46 The Respondent submitted that the Applicants' application lacks merit and does not meet the threshold for the grant of the orders sought.
- 47 It was submitted that the Applicants seek enlargement of time to deposit the sum of Kshs. 27,000,000 in a joint interest-earning account, yet they unilaterally deposited the said funds in Court without any express order permitting such deposit or consent from the Claimant or his advocates.
- 48 The Respondent submitted that it is trite law that the orders sought are within the ambit of the provisions of Order 42 Rule 6 which requires a party seeking a stay of execution to prove the: that the application was filed without undue delay; substantial loss if the stay is not granted; that the applicant has provided security for the due performance of the decree.
- 49 It is the Respondent's submissions that although the Applicants were granted conditional stay orders on 13th November 2025, they failed to comply with the stipulated timelines. The Respondent argued that the orders were self-executing, requiring the parties to agree on the deposit of the Kshs. 27,000,000 in a joint interest-earning

account, and not in Court where the funds would not attract interest.

50 The Respondent submitted that no agreement was reached between the parties within the timelines given by the Court and that the Applicants failed to deposit the funds in the joint account as directed. It was therefore submitted that the conditional stay orders lapsed on 3rd December 2025, consequently, there are no subsisting orders capable of variation or review.

51 The Respondent further submitted that the Applicants only filed the present application on 11th December 2025, 8 days after the expiry of the stay orders, and that such delay is inordinate and unexplained. It was argued that the application ought to have been filed before the lapse of the orders and that failure to do so renders the application incompetent.

52 It is the Respondent's submissions that the filing of the application after the lapse of the stay orders is an afterthought, made in bad faith, and amounts to an abuse of the Court process. The Respondent argued that the Applicants are effectively seeking to reinstate lapsed stay orders "through the back door" and are inviting the Court to excuse their indolence, which ought not to be countenanced.

53 The Respondent submitted that since the conditional stay orders granted on 13th November 2025 expired prior to the

filing of the application, there are no orders in existence upon which the Court can exercise its discretion, and the application is therefore untenable.

54 I have examined all the averments and submissions of the parties herein. The applicant seeks court's indulgence to extend time within which to deposit the funds in an interest earning account. The respondents oppose the application.

55 It is however apparent that the respondents will suffer no prejudice if the applicants are given time to implement the orders of this court. I will therefore allow the application and grant the applicant 30 days to deposit the kshs 27,000,000 in a joint interest earning account. I also direct the immediate release of the security funds deposited in court to the joint interest earning account. Costs in the cause.

**Dated, Signed and Delivered Virtually at Nairobi
this 16th Day of April, 2026.**

**HELLEN WASILWA
JUDGE**