

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC CAUSE NO. E122 OF 2022

(Before Hon. Lady Justice Hellen Wasilwa, J)

DAVID BULEMI SHIVASHI.....1ST
CLAIMANT

JEREMIA OUMA ONGWAMA.....2ND
CLAIMANT

PATRICK M BUGUA KARANJA.....3RD
CLAIMANT

SAMUEL MUBATSI SAKA.....4TH
CLAIMANT

DANIEL WANGEWA GITHINJI.....5TH
CLAIMANT

EARNEST JOMO LUVALE.....6TH
CLAIMANT

VS

SBM BANK KENYA
LIMITED.....RESPONDENT

RULING

1 The Claimants filed a Notice of Motion dated 27th October 2025 seeking orders: -

1. *Spent*
2. *THAT this Honourable Court be pleased to order the immediate and unconditional release to the Claimants of the sum of Kshs. 1,879,614.00 so far*

deposited in Court on 21st July 2025, and further direct the Respondent to forthwith deposit the outstanding balance of Kshs. 668,245.00 in compliance with the Court's conditional stay orders, failing which execution to issue for the said balance without further reference to Court.

3. *THAT in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to find that the Respondent's failure to deposit the full decretal sum as ordered rendered the conditional stay inoperative and lapsed, and consequently order the release of the entire decretal sum to the Claimants forthwith.*
4. *THAT the costs of this Application be borne by the Respondent in any event.*

2 On the other hand, the Respondent also filed a Notice of Motion application dated 3rd March 2026, seeking orders:

1. *Spent*
2. *THAT there be a stay of execution of the Warrants of Attachment issued to Mbusera Auctioneers dated 26th February 2026, restraining the removal, sale, disposition or any other interference with the Applicant's Assets listed in the Proclamation Notice dated 26th February 2026, pending hearing and determination of this Application.*
3. *THAT the Warrants of Attachment issued to Mbusera Auctioneers together with the Proclamation Notice issued by the said auctioneers on the 26th February 2026, be set aside.*

4. *THAT the order requiring the Respondent to deposit in Court the assessed costs be extended for a further period of 21 days from the date of this order.*
5. *THAT the Judiciary Accounts team to forthwith issue a fresh invoice for the deposit of the assessed costs in the sum of Kshs. 665,020.*
6. *THAT costs of the Application be awarded to the Respondent/ Applicant.*

Claimants' Case

- 3 The Claimants aver that Judgment in this cause was delivered on 19th April 2024 in their favour, thereby conclusively determining the dispute between the parties and rendering the decretal sum due and payable forthwith.
- 4 They aver that the said Judgment remains valid, binding and enforceable and that to date, the Respondent has not satisfied the decree issued by this Court.
- 5 The Claimants aver that since the delivery of Judgment, a period of nearly two (2) years has elapsed without the Respondent filing a Notice of Appeal, instituting any appeal before the Court of Appeal, or seeking enlargement of time under the Court of Appeal Rules, 2022. They contend that there is presently no competent or subsisting appeal capable of sustaining any stay of execution.

- 6 It is the Claimants' case that pursuant to conditional stay orders issued by this Court, the Respondent was expressly required to deposit the full decretal sum as a condition precedent to the grant and/or continuance of stay of execution. The Respondent only deposited a sum of Kshs. 1,879,614.00 in Court on 21st July 2025 and has failed, neglected and/or refused to deposit the outstanding balance of Kshs. 668,245.00 in blatant breach of the Court's conditional orders.
- 7 They assert that it is trite law that a conditional stay of execution is strictly contingent upon full and exact compliance with the terms imposed by the Court and that partial compliance cannot confer the benefit of stay. Consequently, by reason of the Respondent's non-compliance, the stay of execution lapsed, became inoperative and is incapable of being relied upon in law.
- 8 The Claimants further aver that the Respondent's deposit of a partial sum ostensibly as security pending appeal is devoid of legal foundation, there being no pending or competent appeal to anchor such security. They contend that the continued retention of the sum of Kshs. 1,879,614.00 in Court serves no lawful purpose and amounts to an unjustified obstruction of execution and enjoyment of the fruits of Judgment.
- 9 It is the Claimants' case that they continue to suffer prejudice and financial hardship as a result of being unjustly deprived of the fruits of their Judgment despite

the lapse of time and the Respondent's non-compliance with Court orders.

- 10 They further aver that the Respondent's conduct is dilatory, prejudicial to the Claimants, and constitutes an abuse of the Court process intended to defeat and/or delay satisfaction of a lawful decree.
- 11 In opposition to the Respondent's application, the Claimants filed a replying affidavit dated 9th March 2026, sworn by the 1st Claimant, DAVID BULEMI SHIVACHI.
- 12 The Claimants noted that the Respondent has approached this Court seeking to set aside the warrants of attachment and to stay execution, which application they term as a belated attempt to obstruct and delay the lawful execution of the decree.
- 13 It is the Claimant's case that the judgment dated 19th April 2024 remains valid, binding and enforceable, and to date the Respondent has not satisfied the decree issued by this Court. Notably, the Respondent has not filed any Appeal against the Judgment.
- 14 The Claimants assert that the Respondent has not filed any Notice of Appeal, Record of Appeal or any competent appeal proceedings before the Court of Appeal, nor has it sought or obtained leave to file an appeal out of time. They contend that in the absence of a competent appeal or any subsisting appellate proceedings, the Respondent's attempt to invoke the jurisdiction of this Court to halt execution lacks any legal foundation.

- 15 They contend that the Respondent cannot purport to rely on hypothetical or speculative appellate proceedings to deny them the fruits of a lawfully obtained Judgment and that stay of execution cannot exist in a vacuum but must be anchored upon a competent appeal or an intended appeal properly instituted in accordance with the law.
- 16 On execution, the Claimants aver that they lawfully initiated execution proceedings strictly in accordance with the law after the Respondent failed and/or neglected to satisfy the decree despite having ample opportunity to comply with the judgment. They assert that the warrants of attachment issued to the Auctioneers were properly obtained pursuant to a lawful decree and valid execution process.
- 17 They contend that the Respondent's allegation that execution is illegal for want of a Notice to Show Cause is misleading and intended to misdirect this Court, as the decree has remained unsatisfied for a considerable period.
- 18 The Claimants aver that the Respondent's explanation that it was unable to deposit the decretal sum due to alleged technical difficulties with the Court payment system is wholly implausible, unsupported by credible evidence and incapable of excusing non-compliance. They assert that the Respondent had numerous lawful avenues available to ensure compliance, including seeking directions from the Court, but instead chose to remain indolent.

- 19 They contend that the Respondent only approached this Court after lawful execution proceedings were commenced, which demonstrates a deliberate strategy aimed at delaying satisfaction of the decree and denying them the fruits of their Judgment.
- 20 The Claimants assert that it is a well settled principle of law that a successful litigant is entitled to enjoy the fruits of his Judgment without unreasonable obstruction or delay. They aver that they have waited for a considerable period since the delivery of Judgment and continue to suffer prejudice and financial hardship as a result of the Respondent's persistent refusal to satisfy the decree.
- 21 They therefore contend that the Respondent's application is frivolous, vexatious and devoid of any legal merit and amounts to an abuse of the Court process.
- 22 It is the Claimants' case that unless the Respondent's application is dismissed, they stand to suffer continued injustice. They urge the Court to dismiss the Respondent's application with costs, allow execution to proceed to its lawful conclusion.

Respondent's Case

- 23 In opposition to the Claimants' case, the Respondent filed a replying affidavit dated 9th March 2026, sworn by Henry Omino, an Advocate of the High Court of Kenya practicing

as such in the firm of Walker Kontos and having conduct of the matter on behalf of the Respondent.

- 24 The Respondent avers that it duly filed a Notice of Appeal and a letter bespeaking proceedings within the timelines prescribed by law, both dated and filed on 2nd May 2024; both were duly served upon the Claimants' Advocates via email on 8th May 2024.
- 25 It is the Respondent's case that it is yet to receive communication from the Court registry notifying it that the proceedings are ready for collection so as to enable it file the Record of Appeal.
- 26 The Respondent further avers that pursuant to its application for stay of execution, Hon. Justice Stella Rutto on 17th October 2024 granted an order of stay of execution pending appeal. The said stay was conditional upon the deposit of the decretal sum in a joint interest earning account in the names of the parties' Advocates within 45 days.
- 27 The Respondent asserts that the Claimants' Advocates failed to cooperate in the setting up of the joint account, thereby prompting it to file an application to compel them to supply the necessary documentation to facilitate the opening of the said account, or in default, for leave to deposit the decretal sum and costs in Court.
- 28 It avers that pursuant to the said application, this Court on 18th June 2025 ordered the Claimants' Advocates to comply in the setting up of the joint account, failing which

the Respondent was at liberty to deposit the decretal sum in Court. Despite this order, the Claimants' Advocates failed to supply the requisite documents, thereby frustrating the opening of the joint account.

- 29 The Respondent avers that as a result, it took steps to deposit the decretal sum together with the assessed costs in Court. It asserts that the Judiciary generated two invoices for this purpose, namely Invoice Number E4HE2WP4 for Kshs. 1,879,614.00 being the decretal sum, and Invoice Number EAHUFA6J for Kshs. 665,020.00 being the assessed costs.
- 30 The Respondent stated that the first invoice, in respect of the decretal sum, was successfully paid into Court, however, despite numerous attempts, payment of the second invoice in respect of the assessed costs was unsuccessful as the transaction kept being rejected on account of an invalid or faulty invoice number.
- 31 The Respondent asserts that upon encountering the said challenge, its Advocates followed up with the Judiciary Accounts Office, which referred them to its bankers, KCB Bank. KCB Bank confirmed that the invoice number is system-generated and that payment could only be effected using a valid system-generated invoice, thereby placing the issue beyond the Respondent's control.
- 32 It is the Respondent's case that due to this technical challenge, they have been unable to deposit the assessed costs, and that the said sum is currently held by the

Respondent's Advocates pending resolution of the issue. They contend that the failure to deposit the assessed costs is not deliberate but is occasioned by a system error beyond their control. They further assert that they remain ready and willing to deposit the sum of the 2nd invoice as and when the technical issue on the Judiciary's end is resolved.

33 In support of its application, the Respondent filed a supporting affidavit dated 3rd March 2026.

34 It is the Respondent's case that the stay of execution granted by this Court on 17th October 2024 remains valid and it would be prejudicial to allow execution to proceed before the intended appeal is heard and determined.

35 The Respondent states that the execution process initiated by the Claimants is illegal for failure to comply with the mandatory provisions of Order 22 Rule 18 of the Civil Procedure Rules. Since the decree is more than one year old, execution could only issue after a Notice to Show Cause has been issued to the Judgment Debtor.

36 It is the Respondent's case that no such Notice to Show Cause was issued prior to the commencement of execution proceedings and contend that the execution is therefore unlawful and irregular.

37 The Respondent asserts that the impugned execution is illegal and that the Claimants' application is unmerited,

therefore, it urged this Court to set aside the warrants of attachment.

Claimants' Submissions

- 38 On whether there exists a competent appeal, the Claimants submitted that the Respondent's reliance on the alleged filing of a Notice of Appeal as justification for failure to comply with the decree and orders of this Court is fundamentally flawed both in law and in fact. Under Rule 77 of the Court of Appeal Rules, 2022, a party intending to appeal is required to lodge a Notice of Appeal within fourteen (14) days from the date of the decision intended to be appealed against. The purpose of such notice is merely to signify the intention of the aggrieved party to challenge the decision before the Court of Appeal.
- 39 It is the Claimants' submission that the filing of a Notice of Appeal alone does not constitute an appeal. A Notice of Appeal is merely a preliminary procedural step in the appellate process and does not in itself institute an appeal before the Court of Appeal.
- 40 They further submitted that once a Notice of Appeal has been lodged, the intending appellant must thereafter institute the appeal by filing a Memorandum of Appeal together with a Record of Appeal within 60 days as stipulated under Rule 82 of the Court of Appeal Rules, 2022. It is the filing of these documents that formally commences an appeal and brings the matter before the appellate court for determination.

- 41 It was submitted that in the absence of a Memorandum of Appeal and Record of Appeal, no appeal can be said to exist in law. In the instant matter, the Respondent has not filed any Memorandum of Appeal or Record of Appeal, nor has it produced any Certificate of Delay from the Court registry nor any order of extension of time issued by the Court of Appeal to justify the failure to institute the appeal within the prescribed period.
- 42 They submitted that nearly two years have elapsed since delivery of judgment without the Respondent instituting any appeal, and that in law, a Notice of Appeal that is not perfected within time becomes spent, stale and legally ineffective. Such a notice cannot be relied upon to confer any legal advantage or to suspend the execution of a lawful decree.
- 43 It is the Claimants' submission that Notice of Appeal that is not perfected through the filing of a Record of Appeal within the stipulated period becomes legally impotent and cannot be relied upon to impede the execution of a judgment. They cited ***Equity Bank Limited v West Link Mbo Limited [2013] KECA 320 (KLR)*** and ***Mae Properties Limited v Joseph Kibe & another [2017] eKLR.***
- 44 It was submitted that the Respondent has not demonstrated the existence of any appeal whatsoever before the Court of Appeal. What exists is merely an unperfected Notice of Appeal which has remained dormant

and legally ineffectual for nearly two years. The Respondent cannot therefore seek to rely on a non-existent appeal to justify the continued retention of the decretal sum deposited in Court or to delay the Claimants' enjoyment of the fruits of their judgment.

45 On failure to comply with conditional stay orders, the Claimants submitted that the Respondent's explanation that it deposited part of the decretal sum in Court and that the failure to deposit the outstanding balance was occasioned by a technical error within the Judiciary payment system; is entirely unpersuasive and cannot excuse the Respondent's continued non-compliance with the clear orders of this Court.

46 It is the Claimants' submission that the Court directed that the stay would only subsist upon the Respondent depositing the entire decretal sum in Court within the period stipulated by the Court. The deposit of the decretal sum was therefore not optional; it was the very foundation upon which the stay of execution was granted.

47 They argued that compliance with conditional orders must be strict, complete and within time prescribed by the Court. Conditional stay orders are not mere procedural formalities; they are binding directives of the Court which must be complied with fully in order for a party to benefit from the relief granted.

48 The Claimants submitted that the Respondent's explanation that the failure was due to a technical issue within the Judiciary payment system is unpersuasive and

unsupported by credible evidence, noting that no official communication from the Judiciary has been placed before the Court to confirm the existence of such an error.

49 They further submitted that even assuming such a technical issue existed, the Respondent had several lawful options available, including moving the Court for directions or seeking extension of time, but failed to take any such steps. Instead, it allowed time to lapse while continuing to rely on a conditional stay it had not complied with. Such conduct demonstrates a clear lack of diligence and respect for the authority of this Court.

50 It was submitted that conditional stay orders are self-executing and lapse automatically upon non-compliance, and that having failed to deposit the entire decretal sum, the stay became inoperative and incapable of further operation.

51 On the Claimants' right to enjoy the fruits of judgment, they submitted that it is a fundamental principle of law that a successful litigant is entitled to enjoy the fruits of his judgment without unreasonable delay.

52 They submitted that Courts have consistently affirmed that the right of a successful litigant to realize the fruits of their judgment should not be impeded except for compelling and legally justifiable reasons. Execution of a decree is not a punitive process but rather the lawful enforcement of the Court's determination. Reliance was placed on ***Machira t/a Machira & Co. Advocates v East African Standard (No. 2) [2002] eKLR***, where the

Court held that a successful litigant should not be deprived of the fruits of his judgment except for good cause.

53 The Claimants submitted that no such good cause has been demonstrated in the present matter, noting that nearly two years have elapsed since the delivery of Judgment without any appeal being instituted or compliance with the conditional stay orders.

54 They argued that the continued retention of the decretal sum in Court serves no legitimate purpose and only perpetuates injustice by denying them the benefit of a lawfully obtained Judgment.

55 It is the Claimant's submission that the Respondent's conduct in this matter is plainly dilatory, obstructive and inconsistent with the principles of finality in litigation. If such conduct were to be tolerated, it would effectively allow judgment debtors to frustrate the enforcement of court decrees through procedural delay and inaction.

56 On abuse of the Court process, the Claimants submitted that the Respondent's conduct amounts to an abuse of the Court process. The Respondent has failed to institute a competent appeal, failed to comply with conditional stay orders, and yet continues to oppose execution and seek to retain the decretal sum in Court.

57 They argued that such conduct demonstrates a deliberate intention to frustrate and delay the enforcement of the

decree and that the Court's process should not be used as a mechanism for delay or obstruction.

- 58 It is the Claimants' submission that it is a cardinal principle of the administration of justice that litigation must come to an end. Once a court of competent jurisdiction has rendered its judgment and no competent appeal has been instituted within the time prescribed by law, the successful party must be allowed to enjoy the fruits of that judgment. To permit the Respondent to continue withholding the decretal sum in the absence of a valid appeal would be to undermine the authority of the Court and erode the principle of finality in litigation.
- 59 They further submitted that allowing the Respondent to continue withholding the decretal sum in the absence of a valid appeal would undermine the authority of the Court and erode the principle of finality in litigation.
- 60 The Claimants submitted that the Respondent has not demonstrated the existence of any competent or subsisting appeal capable of justifying the continued withholding of the decretal sum. The Respondent has neither instituted an appeal nor complied with the conditional stay orders, and that there exists no valid stay of execution capable of preventing them from realizing the fruits of their Judgment.
- 61 They therefore urged this Court to allow the Notice of Motion dated 27th February 2026, order the immediate release of the decretal sum together with accrued interest, direct the Respondent to deposit the outstanding balance

forthwith failing which execution do issue, and award costs of the application to the Claimants.

Respondent's Submissions

- 62 The Respondent submitted on five issues: whether the Respondent is in breach of the Conditional Stay issued herein; whether such failure was deliberate; whether the decretal sum deposited in Court should be released to the Claimants; whether the execution process initiated by the Claimants is irregular. And what orders should the court grant.
- 63 On the first issue, the Respondent submitted that it is common ground that this Court directed it to deposit the decretal sum together with the assessed costs. To facilitate compliance, the Court processed two invoices, one for the decretal sum and another for the assessed costs.
- 64 The Respondent submitted that it immediately took steps to comply with the orders and successfully deposited the decretal sum. However, payment of the second invoice in respect of the assessed costs was unsuccessful as the transaction was returned on account of a faulty invoice number despite several attempts. They argued that proof of these attempts and the error has been placed before the Court.
- 65 The Respondent further submitted that follow-ups with the Judiciary and its bankers, KCB Bank, did not resolve the

issue as payments into Court can only be processed and accepted against a specific invoice.

- 66 On the second issue, the Respondent submitted that any default on its part was purely due to a technical issue within the Judiciary system and was not deliberate. It argued that in a bid to demonstrate good faith and readiness to comply, they remitted the sum equivalent to the assessed costs to their Advocates, who continue to hold the same pending resolution of the technical issue.
- 67 It is the Respondent's submission that its Advocates continue to hold the said sums and is ready and willing to deposit the same immediately a fresh invoice is issued.
- 68 On the third issue, the Respondent submitted that having demonstrated that the failure to deposit the assessed costs was occasioned by factors beyond their control, and given their readiness to comply, it would not be in the interest of justice to release the decretal sum to the Claimants.
- 69 The Respondent submitted that this Court had directed the deposit of the decretal sum upon being satisfied that the Respondent had initiated the appellate process and that there existed a risk that the decretal sum may not be recoverable from the Claimants in the event of a successful appeal. The Claimants have not demonstrated any change in those circumstances and that release of the decretal sum would occasion irreparable prejudice to the Respondent.

70 On the fourth issue, the Respondent submitted that Order 22 Rule 18 of the Civil Procedure Rules provide in mandatory terms that, where a decree is more than one year old, execution of such a decree cannot proceed before a Notice to Show Cause is issued accordingly. It cited ***Ngoge t/a O.P Ngoge & Associates v Orina & 14 others (Miscellaneous Civil Application 883 of 2007) [2025] KEHC 2957 (KLR) (Civ) (13 March 2025) (Ruling)***: *“The Court’s understanding of the above provision and use of the word “shall” therein, is that where a decree is older than one year, a notice to show cause must be taken out as against the judgment debtor requiring him to show cause on a date to be fixed, why the decree should be not be executed as against him. The said provision I believe is deliberately couched in mandatory wording.”*

71 It is the Respondent’s submission that the purported execution process initiated by the Claimants, and the attendant Warrants of attachment and proclamation notices issued by Mbusera Auctioneers, are therefore illegal and are for setting aside as sought in the Respondent’s Application.

72 I have examined all the averments and submissions of the parties herein. The issues for this courts determination are as follows:

- (1) Whether there is any pending appeal filed by the respondents herein.

- (2) Whether the execution process initiated by the respondents is valid.
- (3) What remedies to grant in the circumstances.

ISSUE NO 1

73 I have looked at the record of this cause. I note that on 2/5/2024, the respondent herein filed a notice of appeal before this court. The claimants have averred that a notice of appeal is just that and not an appeal.

74 Order 42 rule 4 of the civil procedure order however states that:

“ for purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the rules of that court notice of appeal has been given.”

Given this position, it is apparent that a notice of appeal was filed and this can be considered as an appeal before the Court of Appeal.

ISSUE NO 2

75 The respondents have submitted that the execution process initiated by the claimants was invalid since there were stay orders in place. The claimants have averred that the orders of stay were conditional upon depositing of the decretal sum in court. It is indeed true that the court issued stay orders on condition that the decretal sum together with assessed costs be deposited in court. To

facilitate the process, 2 invoices one for the decretal sum and other for assessed costs was to be generated.

76 The respondents indeed deposited the decretal sums in court. It is also true that the 2nd deposit was not made as the invoice generated had an error and as late as 16/2/2024, this court made an order directing the accounts office or the office of the DR to generate a corrected invoice to facilitate payment of the assessed costs.

77 It is therefore my finding that there were indeed valid stay orders conditional on some performance or conditions and some of which was partially complied with. Failure to fully comply with the conditions set by court was explainable and the respondents cannot be faulted for not depositing the assessed costs to court as had been directed.

ISSUE NO 3

78 Given my findings above, it is true that the execution already being done by the claimants cannot be allowed to continue and is hereby stayed as per the conditions in force to be effected within 14 days if not already complied with. Costs in the cause.

**Dated, Signed and Delivered Virtually at Nairobi
this 21st Day of April, 2026.**

**HELLEN WASILWA
JUDGE**