



REPUBLIC OF KENYA



**KENYA LAW**  
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**Iloti & 14 others (Acting on Their Behalf and on Behalf of the Dock Workers Union of Kenya)  
v Sang & 2 others (Cause E025 of 2025) [2026] KEELRC 1228 (KLR) (8 May 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1228 (KLR)

**REPUBLIC OF KENYA**

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

**CAUSE E025 OF 2025**

**M MBARÚ, J**

**MAY 8, 2026**

**BETWEEN**

**AMIN ILOTI ..... 1<sup>ST</sup> CLAIMANT**  
**SULMAN OWUOR ..... 2<sup>ND</sup> CLAIMANT**  
**KIBIBI OMERI ..... 3<sup>RD</sup> CLAIMANT**  
**MASKAT SALIM ..... 4<sup>TH</sup> CLAIMANT**  
**MEJUMAA CHIRAU ..... 5<sup>TH</sup> CLAIMANT**  
**RUWA MPATE ..... 6<sup>TH</sup> CLAIMANT**  
**GLADYS MBITHI ..... 7<sup>TH</sup> CLAIMANT**  
**ALI MWAMREZI ..... 8<sup>TH</sup> CLAIMANT**  
**QUEEN MSHIHIRI ..... 9<sup>TH</sup> CLAIMANT**  
**MOHAMED SHAMAHUYA ..... 10<sup>TH</sup> CLAIMANT**  
**MAURICE MWANYULE ..... 11<sup>TH</sup> CLAIMANT**  
**AUGUST RUWA ..... 12<sup>TH</sup> CLAIMANT**  
**JUMA MAJEPO ..... 13<sup>TH</sup> CLAIMANT**  
**KENNEDY OKETCH ..... 14<sup>TH</sup> CLAIMANT**  
**EDWIN WASONGA ..... 15<sup>TH</sup> CLAIMANT**  
**ACTING ON THEIR BEHALF AND ON BEHALF OF THE DOCK WORKERS  
UNION OF KENYA**

**AND**

**SIMON KIPRONO SANG ..... 1<sup>ST</sup> RESPONDENT**



REGISTRAR OF TRADE UNION ..... 2<sup>ND</sup> RESPONDENT

AND

DOCK WORKERS UNION OF KENYA ..... INTERESTED PARTY

### RULING

1. The ruling herein relates to two applications filed by the 1<sup>st</sup> respondent. Application dated 23 March 2026 and the application dated 1 April 2026.
2. The application dated 23 March 2026 is premised on the provisions of sections 1A, 1B, and 3A of the *Civil Procedure Act*, and rules 21 and 73(b) of the Employment and Labour Relations Court (procedure) Rules. The 1<sup>st</sup> respondent is seeking orders:
  1. Spent.
  2. The firm of Ngetich Chiira & Associates Advocates be granted leave to come on record for the 1<sup>st</sup> respondent.
  3. Spent.
  4. The court be pleased to issue an order staying further execution of the judgment and decree issued in the instant matter on 26 February 2026 pending the hearing and determination of the appeal.
  5. Costs of this application be provided for.
3. The application is supported by the annexed affidavit of the 1<sup>st</sup> respondent, Simon Kiprono Sang, and on the grounds that, being dissatisfied with the judgment herein delivered on 26 February 2026, the 1<sup>st</sup> respondent filed Notice of Appeal, but the claimants have since initiated the execution process, and if such proceedings are not stayed, he will suffer irreparable loss and damage. Yet he has filed an appeal.
4. Mr Sang avers that immediately after judgment herein was issued, the claimant proceeded to remove him from office as the Secretary General, yet he has since filed an appeal seeking to challenge the unlawful action in Nairobi ELRCA No. E083 of 2026. The appeal to stay the execution of the decision of the 2nd respondent, the 1st respondent shall suffer irreparable loss and damage.
5. Mr Sang avers that there is a real danger of execution of the judgment, which will render his application seeking a stay of the judgment in the appeal nugatory. A stay should be sought herein to ensure that his appeal is heard on merit and to protect his interests.
6. The instant application is filed without delay to avoid a miscarriage of justice. The application seeking a stay of execution under Nairobi ELRCA E083 of 2026 is scheduled for hearing on 24 March 2026. The application's substratum will be lost if a stay of execution is not granted herein. The main appeal has high chances of success and, in the interests of justice, should be heard first.
7. In reply, the claimants filed the Replying Affidavit of Sulman Owuor, the 2nd claimant, who avers that the application is an abuse of court process, since the 1st respondent sought orders of stay of execution before the Mombasa Court of Appeal in Civil Appeal No. E028 of 2026 – Kiprono Sang v Amin Iloti & others, but the Court of Appeal declined to grant any orders of stay of execution.



8. Owuor avers that the 1<sup>st</sup> respondent cannot seek similar orders before the Court of Appeal and under this suit. He has already applied for a stay of execution in another court, and to move the court as herein done is an abuse of the court process. In any event, the orders sought to be stayed have already taken effect, and there is nothing in execution that can be stayed. A forensic audit of the 2<sup>nd</sup> respondent's accounts has been undertaken, and a report has been filed in court demonstrating that the 1<sup>st</sup> respondent should not enjoy the court orders sought herein.

### **Determination**

9. In an application dated 23 March 2026, the 1<sup>st</sup> respondent sought to change his advocates and be represented by the firm of Ngetich Chiira & Associates Advocates. In the grounds and Supporting Affidavit or the submissions, there is no justification for the change. It is trite under Order 9 rule 9 that any change of advocates post-judgment, as herein, must be with the consent of the outgoing advocates before an application can seek the court's address.
10. Without any form of justification or submission to the need for the change of advocates, the proposed firm of Ngetich Chiira & Associates Advocates sought to enter herein and represent the 1<sup>st</sup> respondent without first addressing the mandatory motions of Order 9, Rule 9 cannot suffice. Any records filed by such firm of advocates, Ngetich Chiira & Associates Advocates, are below the requisite threshold and are therefore invalid and cannot be used to urge the case for the 1<sup>st</sup> respondent.
11. Order 9 Rule 9 of the Civil Procedure Rules provides as follows;
- When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—
- a. upon an application with notice to all the parties; or
  - b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person, as the case may be.
12. The instant application is drawn by Ngetich Chiira & Associates Advocates without notice to the current appointed advocates for the 1<sup>st</sup> respondent, and there is no consent from the advocates allowing a change, as held in *Muga v Engen Kenya Limited & 6 others* [2026] KEELC 2046 (KLR).
13. Provisions of Order 9 Rule 9 are applicable when there is a judgment in place and a party wishes to engage a new advocate or to act in person. This right should be enjoyed upon the set conditions of office to the outgoing advocate or upon consent. None exists in this case.
14. The records thus filed are invalid. They are filed by a firm of advocates to be legitimately and properly not on record.
15. On the substance of the application seeking a stay of execution, the 1<sup>st</sup> respondent, as the applicant, seeks a stay of execution on the basis that he has filed Nairobi ELRCA No. E083 of 2026. The attached records of the appeal annexure “SKS-3” and “SKS-4” to the Affidavit of Mr Sang relate to the following:
- “Being an appeal from the decision of the 1<sup>st</sup> respondent to cause a change in the register of the Dock Workers Union on 27 February 2026, which removed the applicant and replaced him with the 2<sup>nd</sup> respondent.”
16. The orders sought and the referenced appeal are at variance. The judgment herein was issued on different dates. There is no ruling by the 1<sup>st</sup> respondent on 27 February 2026 in these proceedings.



17. The claimants in the Replying Affidavit of Mr Owuor have referenced Mombasa Civil Appeal No. E028 of 2026, wherein the 1st respondent applied for a stay of execution. Indeed, once the 1st respondent moved the Court of Appeal with his application seeking a stay of execution, he cannot revert back and seek similar orders herein. Such is the abuse of the court process.
18. The orders sought cannot be issued.
19. The application dated 23 March 2026 is without merit.
20. On the application dated 1 April 2026, the findings above that the firm of Ngetich Chiira & Associates Advocates is not properly on record negate the very essence of the application.
21. The 1<sup>st</sup> respondent, Simon Kiprono Sang, is the applicant. He is seeking orders:

“The court is pleased to interpret its judgment to the extent of whether it ordered the removal of the 1<sup>st</sup> respondent from the position of secretary general of the interested party.”
22. The application is supported by the affidavit of Simon Kiprono Sang, who avers that the court delivered judgment herein on 26 February 2026 and the next day, 27 February 2026, the 2<sup>nd</sup> respondent proceeded to remove him as the Secretary General of the interested party, basing it on the judgment, while the same did not direct his removal.
23. Mr Sang avers in his affidavit that the judgment did not expressly or directly order the removal of the 1st respondent from the office, thereby creating ambiguity and requiring clarification or interpretation. The 2<sup>nd</sup> respondent has proposed implementing the judgment in a manner that exceeds its express terms, thereby acting ultra vires and without lawful authority. These actions amount to a misinterpretation of the judgment without any legal basis.
24. To his Supporting Affidavit, the 1st respondent attached the subject judgment delivered on 26 February 2026, the letter of the 2nd respondent dated 27 February 2026 on the notice of change of officials of the interested party and the Introduction of the Newly Registered Union Officials and Change of Signatories. These are issued by the 2<sup>nd</sup> respondent.
25. Whereas the court is allowed under Rule 74 of the Employment and Labour Relations Court (Procedure) Rules to review its orders, such must be premised on the discovery of new matters, an error apparent on the record, a mistake or the need for clarification. Further, where there is good cause to seek a review, such a case can be addressed.
26. Interpretation of court orders is not an intrinsically subject for review. That ordinarily should relate to an appeal.
27. The 1<sup>st</sup> respondent seeks an interpretation of whether the court ordered the removal of the 1<sup>st</sup> respondent/applicant from the position of the Secretary General of the interested party.
28. The first page of the judgment sets out the orders and remedies sought by the claimants. The question posed by the 1st respondent, for the purpose of interpretation, review, and clarification, concerns the internal governance structures and systems of the interested party. This was not a determination of the issues identified by the court.
29. However, the 2<sup>nd</sup> respondent submitted that it has since filed the forensic audit as directed by the court, and that it should be actioned accordingly. Under the judgment, the court addressed the reasons and need for the audit, based on facts and findings that there was misappropriation of union funds and that the 1<sup>st</sup> respondent had exposed the union to loss and damage. Any removal or request to change



union officials is a governance issue for the union to address. The prerogative to change officials and discipline members and staff/employees is a prerogative of the union's governance structures, to which any court intervention in the current suit must be premised; otherwise, it would be an overreach. Such overreach is not necessary in the given circumstances of the 1st respondent's application seeking an interpretation of the judgment.

30. The claimants and interested parties have since received the audit report for their action.
31. Accordingly, without compliance with Order 9 Rule 9 of the Civil Procedure Rules, the applications dated 23 March 2026 and 1 April 2026 are invalid, an abuse of court process, and are hereby dismissed. Costs to the claimants.

**DELIVERED IN OPEN COURT AT NAIROBI, THIS 8<sup>TH</sup> DAY OF MAY 2026**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistants: Catherine, Kemboi and Omar

..... and

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