



**Cable Connect Limited v Nyangau (Employment and Labour Relations Appeal E217 of 2024) [2025] KEELRC 649 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 649 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E217 OF 2024**

**JW KELI, J**

**FEBRUARY 28, 2025**

**BETWEEN**

**CABLE CONNECT LIMITED ..... APPELLANT**

**AND**

**JOSEPHAT NYAKUNDI NYANGAU ..... RESPONDENT**

**RULING**

1. The Appellant/Applicant brought an Application by way of Notice of Motion dated 25<sup>th</sup> November, 2024 under Sections 1A,1B, and 3A of the *Civil Procedure Act*, 2010, and Order 22 Rule 22 as well as Order 42 Rule 6 of the Civil Procedure Rules 2010, and all other enabling provisions of the law. The Applicant seeks the following orders;
  - i. Spent
  - ii. Spent
  - iii. That this Honorable Court be pleased to lift, vacate and/or set aside the Proclamation undertaken by Beeline Kenya Auctioneers under the Proclamation Notice dated 22nd November, 2024 on instructions from the Respondent, in its entirety.
  - iv. That the Honorable Court be pleased to vary the Order issued on 16th August, 2024 for deposit of the judgment sum as condition for stay and substitute the same with an Order requiring the Appellant to issue a Bank Guarantee in favour of the Respondent's Advocates for the Judgment sum in the sum of Kshs. 237,230/= from I & M Bank Limited within 14 days of issuance of the order.
  - v. That in the alternative to prayer 4 above, the Respondent be compelled to provide the Applicant with the opened joint interest bank account within 14 days of issuance of the order.



- vi. That the Honourable Court be pleased to vary the order granted on 16<sup>th</sup> August, 2024 and extend the time to deposit the decretal sum of Kshs.237,230/= by 21 days upon receipt of the bank account from the Respondent as per order 5 above.
- vii. That the costs of this application be in the cause.
2. The application was based on the grounds on the face of the application and was further supported by the affidavit of Satish Modi sworn on 25th November, 2024 who averred that the Appellant has been issued with a notice of proclamation notice dated 22nd November, 2024 by the Respondent in respect of the judgment issued in MCELRC Case No. E601 of 2023, which is the subject of this appeal. It is averred that the threatened execution is unlawful and constitutes contempt of court as there are subsisting orders of stay of the said judgment on the condition that the Appellant deposits the decretal sum in an interest earning account in the name of both advocates.
3. The Appellant avers that it has never been provided with the bank account to deposit the decretal sum despite providing all the details requested by the Respondent to open the bank account. In particular it is averred that, on 16th September, 2024 the Court granted a stay of execution in favour of the Appellant in respect of the judgment dated 10th July, 2024 in MCELRC Case No. E601 of 2023 pending the hearing and determination of the Appeal herein, on the basis of which, the Hon. Court directed parties to file a consent to that effect. As a condition for stay thereof the Court directed that the Appellant shall deposit the decretal sum in a joint interest earning account. However, it is averred that the bank account was never opened within the said 45 days which lapsed on 1st October, 2024 at no fault of the Appellant.
4. The Appellant further avers that it yet to be provided with the bank account details by the Respondent to deposit the sum despite its email of 24th October, 2024 following up on the same. The Appellant averred that the failure to comply with the Court's orders was occasioned by the Respondent's delay to open the account and failure to provide the details upon opening the same. It is contended that the Applicant did file an application dated 26th September, 2024 seeking to replace the depositing of funds with a bank guarantee with one of the informing grounds being the delay in opening the account which application is still pending. As such the Applicant has always been keen on providing security for performance of the decree in the lower court.
5. The Applicant averred that it is not to be faulted for the failure to deposit the funds within the 45 days. Further, it is averred that the Appellant's appeal is as such likely to be defeated if the orders staying the threatened execution by the Appellant are not issued and the proclamation set aside. The Respondent is being mischievous in an attempt to steal a march from the Appellant and it is in the interests of justice that the honourable court sees through its machinations and allows the current application the Appellant being in no way to blame for the failure to adhere to the timelines and having also made an effort to follow up on the same.

## **Response**

6. The application was opposed by the Respondent vide its Replying Affidavit sworn by the Respondent on the 20<sup>th</sup> February, 2025. The Respondent averred that the Appellant/ Applicant herein failed to deposit the said amount and instead, filed the application herein seeking to vary the court's order and to lift, vacate and/or set aside the Proclamation undertaken by Bealine Kenya Auctioneers under the Proclamation Notice dated 22nd November, 2024.
7. The Respondent averred that the effect of the adoption of the consent as an order of the court was that stay was allowed on condition that the judgment sum be deposited in a joint interest earning



account. It is further averred that the Application was drafted on the basis of trial and error and hence should not be put up with. The Application by the Applicant has been lodged devoid of real triable issues and an afterthought whose sole intention is to delay the legitimate enjoyment of the fruits of my lawful judgment. The Respondent asserted that the Appellant/ Applicant's failure of depositing the said amount in a joint interest account was occasioned by the Respondent's delay to open the account and failure to provide the details upon opening the same is unsubstantiated and claimed that this is also not a sufficient reason to be entertained by court for having failed to adhere to the orders of the court. It is averred that the Respondent was keen on opening the bank account and it is the Appellant/ Applicant who delayed in sending crucial documents to aid in opening of the Bank account and kept sending apologies for the delay.

8. The Respondent claimed that the Appellant/ Applicant failed to provide the Respondent's counsel with the partnership deed that was relevant in the opening of the account. For the said reasons, the Appellant/ Applicant herein has not met the conditions precedent for the court to vary its orders and to lift, vacate and/ or set aside the Proclamation. Therefore, the Respondent contends that the instant Application is misconceived, scandalous, frivolous an abuse of the court process and should be dismissed with costs.

### **Further Response**

9. The Applicant replied to the Respondent's Replying Affidavit through its Further Affidavit sworn by Satish Modi dated 24<sup>th</sup> February 2025. The Applicant reiterated that the failure to comply with the Court Order directing the deposit the decretal sum was not due to any negligence or inaction on the part of the Applicant but was entirely occasioned by the Respondent's failure to provide the necessary account details despite repeated requests.
10. The Applicant maintained that it has at all material times demonstrated readiness and willingness to comply with the court order by providing all requested documents promptly, including those requested after the 45- day period. The Applicant restated that the Respondent has on multiple occasions frustrated the compliance process by making piecemeal and unjustified requests for additional documentation, thereby deliberately prolonging the process of opening the joint account, which should have been a straightforward procedure.
11. The Applicant further averred that the Respondent's claim that the Applicant failed to submit a "partnership deed" occasioned the Respondent's failure to open the bank account is misleading as no such document is required for the opening of a joint account and the Respondent has failed to demonstrate why such a document is necessary. The Applicant contends that as a result of the Respondent's deliberate inaction and failure to provide the necessary account details within the prescribed period, the Applicant was compelled to file the present application seeking the Court's intervention to allow the substitution of the deposit requirement with a bank guarantee or, in the alternative, an extension of time for compliance.
12. Application was opposed by the respondent dated 6<sup>th</sup> November 2024 who opposed the security of bank guarantee on the basis that the decretal amount would not earn interest, the bank guarantee was unsafe and unreliable.
13. The respondent further filed an affidavit dated 20<sup>th</sup> February 2025 to the effect that they had asked for the partnership deed from the applicant, who stated it was confidential. The Respondent also filed a preliminary objection dated 28<sup>th</sup> January 2025, stating the application was an abuse of court process as the issues had been canvassed in the application of 5<sup>th</sup> August 2024 leading to the order to deposit the decretal amount in a joint interest earning account.



## Decision

14. The application was canvassed by way of written submissions with the Appellant/Applicant complying. The Respondent did not file its Written Submissions.
15. The Appellant submitted the following issues for determination:
  - i. Whether this Honourable Court should lift, vacate and/or set aside the proclamation undertaken by Bealine Kenya Auctioneers under the Proclamation Notice dated 22<sup>nd</sup> November, 2024
  - ii. Whether this Honourable court should vary the Order issued on 16<sup>th</sup> August, 2024
  - iii. Whether this Honourable Court should enlarge time to enable the Applicant comply with the orders issued by the trial court on 16<sup>th</sup> August, 2024
16. The court having perused the pleadings by the parties and written submissions of the Applicant was of the considered opinion that the issues for determination in the ruling whether the application was merited.
17. The applicant provided proof of various correspondence with the advocate for the respondent on opening of the joint bank account as per the Court Order for deposit of decretal amount as security. In response, the respondent further cited an incident of failure to supply a document by the applicant. The court noted both parties frustrated the process of opening the joint bank account. The court then looked into the option of another security proffered by the applicant of bank guarantee.
18. On the sufficiency of the bank guarantee as security under Order 46 rule 2 of Civil Procedure rules it is stated “(2) No order for stay of execution shall be made under subrule (1) unless—
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.” The court held that it was not for the Respondent/ decree holder to be satisfied of the sufficiency of the security of performance of the Decree but the court. No plausible reason was given to the court to doubt the sufficiency of the security of the bank guarantee furnished to the court by the applicant. The parties failed to open the joint bank account of which the court held they were both guilty of non-compliance.
19. On receipt of the application under certificate of urgency justice Abuodha considered the application exparte and allowed the deposit of the bank guarantee. The respondent while not cooperating with the applicant to open the joint bank account in compliance with Order of Court of 16<sup>th</sup> August 2024 proceeded to issue proclamation notice in execution of the Decree. Justice Abuodha vide exparte Court Order dated 27<sup>th</sup> November 2024 issued a temporary stay of execution on condition of deposit of bank guarantee of the full decretal amount on or before 16<sup>th</sup> December 2024. On 16<sup>th</sup> December 2024 Mary Munjogu advocate informed the court they had furnished security as ordered. The court confirmed receipt of the bank guarantee by I& M bank dated 11<sup>th</sup> December 2024 for the decretal amount of Kshs. 237,230.
20. The preliminary objection of 28<sup>th</sup> January 2024 by the respondent did not raise a pure point of law and is dismissed (Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd ).



21. The court found no reason why it should not confirm the said Court Order of 27<sup>th</sup> November 2024, the bank guarantee having been furnished, pending the hearing and determination of the appeal which it hereby does. Consequently, the Order of 16 August 2024 stands set aside and the application dated November 25, 2024 is allowed with costs in the cause.
22. The appellant to proceed to file record appeal of appeal in 45 days. Mention on May 5, 2025 to confirm compliance and issue hearing directions.
23. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**J.W. KELI,**

**JUDGE.**

In the presence of:

Court Assistant: Otieno

Applicant -Kiarie h/b Kendi

Respondent: -absent

