



**Ombajo v Institute of Certified Public Accountants of Kenya [ICPAK]  
(Cause 224 of 2014) [2025] KEELRC 606 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 606 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 224 OF 2014  
J RIKA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**NEBERT MANDALA OMBAJO ..... CLAIMANT**

**AND**

**INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA  
[ICPAK] ..... RESPONDENT**

**RULING**

1. Judgment in this Claim was delivered on 8<sup>th</sup> December 2017 [Radido J].
2. The Claim as indicated in the title above, was filed in 2014, some 11 years ago.
3. The Court in the first instance, dismissed the Claim, granting the Counterclaim, at Kshs. 1,165,000.
4. The Claimant appealed against the Judgment. On 2<sup>nd</sup> December 2022, the Court of Appeal allowed his Appeal, holding that he was unfairly dismissed.
5. The Counterclaim was unaffected by the Appeal.
6. The dispute was remitted to the Trial Court for assessment of damages due to the Claimant, for unfair termination.
7. The parties, back at the Trial Court, filed submissions on the assessment of the compensatory award due to the Claimant.
8. In its Ruling dated 16<sup>th</sup> July 2024, the Trial Court [Wasilwa J], awarded the Claimant a total of Kshs. 6,478,687 in compensation and terminal benefits.
9. Less the amount awarded to the Respondent in Counterclaim, the Claimant was awarded Judgment in the sum of Kshs. 5,398,687.



10. The Respondent intends to go back to the Court of Appeal to challenge the Ruling of the Trial Court dated 16<sup>th</sup> July 2024.
11. It has filed an Application dated 25<sup>th</sup> July 2024 seeking stay of execution of the Ruling dated 16<sup>th</sup> July 2024. It is submitted that the Respondent has satisfied all the principles governing grant of an order of stay of execution of Judgment/ Decree, pending Appeal.
12. The Claimant is opposed to the Application. His position, expressed through his affidavit sworn on 18<sup>th</sup> September 2024, is that the Intended Appeal is idle, with no chance of success.
13. He holds that he is in a position to pay back to the Respondent, the amount awarded to him, if the proposed Appeal is upheld. He belongs to what can be termed as, a modern class of landed gentry. He exhibits his certificates of ownership of various parcels on land, one which is valued at Kshs. 11.5 million. He is entitled to the fruits of his Judgment.
14. Lastly, the Claimant submits that should the Application be allowed, the Respondent is ordered to give security, by way of depositing the decretal sum, in a joint interest earning bank account, in the names of the respective Advocates.
15. Parties agreed to have the Application considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of their submissions at the last appearance before the Court, on 21<sup>st</sup> November 2024.

**The Court Finds: -**

16. This is an old Claim, filed in the year 2014, and which has had the benefit of consideration by multiple Hon. Judges, including Judges of the Court of Appeal.
17. The first trial resulted in dismissal of the Claim, and upholding of the Counterclaim. The outcome on Appeal, was in favour of the Claimant. The decision dismissing his Claim was reversed. The Court of Appeal found that his dismissal by the Respondent, was unfair, and that he is entitled to compensation.
18. The second trial, which was conducted through written submissions, yielded an outcome in favour of the Claimant, granting him compensation and terminal benefits, in the sum of Kshs. 5,398,697.
19. It is noted that, there is a binding conclusion of the Court of Appeal, that the Claimant was unfairly dismissed, and entitled to compensation.
20. The award made to the Respondent on Counterclaim was not affected by the Appeal, or the Ruling of the Trial Court dated 16<sup>th</sup> July 2025.
21. The Respondent intends to go back to the Court of Appeal, to challenge the assessment and award of the Trial Court, communicated to the Parties in the Ruling subject matter of this Application.
22. In the view of the Court, the Intended Appeal falls within a very narrow compass of monetary compensation, and the main consideration is therefore, whether decretal sum paid to the Claimant, will be irrecoverable from the Claimant, in event the Court of Appeal reduced the size of the monetary award.
23. To resolve this issue, the Court has looked at the financial wherewithal of the Claimant. Is he a man of straw, unable to refund the Respondent the decretal sum, in event the proposed Appeal succeeds?
24. The Claimant has exhibited his wealth before the Court. He is not a necessitous litigant. He belongs to the landed gentry, with demonstrable wealth, far in excess of the value of the contested decretal sum.



He after all, was employed by the Respondent as Director Finance, earning a monthly salary of Kshs. 594,375. He seems to have accumulated significant wealth. The Court cannot overlook his exhibited certificates of land ownership, in considering this application. He is not likely to be unable to refund the Respondent. The Appeal is not likely to be rendered academic, if execution of the Trial Court's Judgment proceeds.

25. The Claim was filed way back in 2014. It is not in the interest of the Court or the Parties, to hear and determine their dispute repeatedly, and keep the Judgment unexecuted, as the Parties move back and forth, and slug it out, between various jurisdictions. Statistical data in the judiciary, continues to reflect that the Claim, filed in 2014, is pending at the E&LRC. The Court and the Parties must endeavour to have closure.

**It Is Ordered: -**

- a. The Application by the Respondent dated 25<sup>th</sup> July 2024 is declined.
- b. No order on the costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025.**

**JAMES RIKA**

**JUDGE**

