



REPUBLIC OF KENYA



KENYA LAW
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**Mwathi v Collection Agency Kenya Ltd (Cause 2441 of 2017)
[2025] KEELRC 558 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 558 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2441 OF 2017
S RADIDO, J
FEBRUARY 27, 2025**

BETWEEN

ANNE WANGECHI MWATHI CLAIMANT

AND

COLLECTION AGENCY KENYA LTD RESPONDENT

RULING

1. Judgment in this Cause was delivered on 13 July 2022.
2. Collection Agency Ltd (the Respondent) was not satisfied, and it moved the Court on 9 February 2024, seeking orders:
 - i. ...
 - ii. There be a stay of execution pending the hearing and determination of this application inter-partes.
 - iii. The judgment entered against the Respondent/applicant herein be set aside and all other consequential orders.
 - iv. The Claimant be recalled for purposes of cross-examination and the Respondent/applicant's witness be allowed to testify in this matter.
 - v. Costs of this application be provided for.
3. The Court heard the Motion and in a Ruling delivered on 29 May 2024 dismissed it with costs.
4. On 5 June 2024, the Respondent filed a Motion seeking orders:
 - i. ...



- ii. There be an interim order of stay barring the Claimant herein from executing a decree of the Court either by herself, agent, representative, servant and/or auctioneers pending the hearing and determination of this application inter-partes.
 - iii. There be an interim order of stay barring the Claimant herein from executing a decree of the Court either by herself, agent, representative, servant and/or auctioneers pending the hearing and determination of Appeal by the Court of Appeal.
 - iv. Costs of this application be provided for.
5. Anne Wangechi Mwanthi (the Claimant) filed a replying affidavit opposing the Motion on 10 June 2024, and pursuant to Court directions, the Respondent filed its submissions on 10 July 2024, and the Claimant on 18 November 2024.
6. The Court took brief addresses from the parties on 19 November 2024 and consequently granted a stay of execution on condition that the Respondent deposited the decretal sum in Court on or before 26 November 2024.
7. The Respondent did not comply and on 26 November 2024, it filed another Motion seeking orders:
 - i. ...
 - ii. This Court do issue an interim order staying execution against the Respondent pending hearing of this application.
 - iii. This Honourable Court do issue an order enlarging the time of depositing decretal amount ordered by the Honourable Court to 17th January 2025.
 - iv. Costs of this application be provided for.
8. The grounds in support of the Motion were that the time given by the Court to deposit the decretal sum into Court as a condition for the stay of execution was too short; the Claimant had threatened to proceed with execution; the Respondent was in the process of mobilising funds to comply with the condition imposed by the Court and that a Notice of Appeal had been filed against the Ruling of the Court delivered on 29 May 2024.
9. The Claimant filed a replying affidavit opposing the Motion on 9 December 2024.
10. The Claimant asserted in the affidavit that the Respondent was seeking a review of the orders issued on 19 November 2024, but had not met the threshold for a review; the Respondent had filed a Motion seeking stay which had earlier been allowed on condition which had not been met; the judgment had been delivered over 2 years ago; the Respondent had not disclosed how it intended to look for funds to satisfy the decree and that a Notice of Appeal did not automatically translate into a stay of execution.
11. The Court directed the parties on 10 December 2024 to file and exchange submissions.
12. The Respondent's submissions were not on record (should have been filed and served by 19 December 2024). The Claimant's submissions were also not on record (should have been filed and served by 21 January 2025).
13. The Court has considered the record, Motion and affidavits.
14. Judgment was delivered on 13 July 2022. An affidavit of service filed on 3 June 2022, shows that the Respondent accepted and acknowledged service of a hearing notice. The Respondent did not attend the hearing.



15. There is no Notice of Appeal against the judgment and decree.
16. After the delivery of the judgment, the Respondent went to sleep until 9 February 2024, when it filed a Motion seeking an order that the judgment be set aside. The Motion was dismissed on 29 May 2024, and the Respondent filed a Notice of Appeal against the Ruling.
17. The dismissal of the Respondent's Motion on 29 May 2024 left the judgment intact and executable.
18. The Respondent, undeterred filed the Motion dated 4 June 2024. The Court granted a conditional stay but the Respondent failed to comply with the condition.
19. The Respondent then filed the instant Motion under consideration under a Certificate of Urgency. The Court directed the Respondent to file and serve submissions on the Motion by 19 December 2024.
20. The Respondent failed to file the submissions by the agreed timeline.
21. The record demonstrates a Respondent party who has taken the prosecution of its defence and case casually. It appears intent on using all legal manoeuvres to delay the Claimant from realising the judgment which has not been appealed against or set aside.
22. The Court finds that the Respondent is not deserving of the exercise of its discretion.

Orders

23. The Motion dated 26 November 2024 is dismissed with costs to the Claimant.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 27TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Wamae Ndegwa & Co. Advocates

For Respondent J.K. Bosek & Co. Advocates

Court Assistant Wangu

