



REPUBLIC OF KENYA



**KENYA LAW**  
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**Korir & 3 others v Golden Lion International Limited (Appeal  
E232 of 2023) [2025] KEELRC 689 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 689 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E232 OF 2023  
DKN MARETE, J  
FEBRUARY 26, 2025**

**BETWEEN**

**RICHARD KIPKEMOI KORIR ..... 1<sup>ST</sup> APPELLANT  
NGETICH DOMINIC ..... 2<sup>ND</sup> APPELLANT  
KENNETH KIMUTAI TONUI ..... 3<sup>RD</sup> APPELLANT  
REUBEN CHERUIYOT SIGEI ..... 4<sup>TH</sup> APPELLANT**

**AND**

**GOLDEN LION INTERNATIONAL LIMITED ..... RESPONDENT**

**RULING**

1. This is an application by way of Notice of Motion dated 2nd February, 2024 and seeks the following orders of court;
  1. Spent.
  2. That a temporary stay of execution of the Ruling, proceedings, Orders and all consequential orders delivered on 30<sup>th</sup> October, 2023 in *Milimani CMEL No. E1443 of 2021* be issued pending hearing and determination of this application for stay of execution pending determination of this application and the appeal
  3. That there be a stay of execution of the Ruling, proceedings, Order and all consequential Orders delivered on 30<sup>th</sup> October 2023 in *Milimani CMEL No. E1443 of 2021* pending the hearing and determination of the Applicants/Defendant's Applicant.
  4. That the Honourable court grants the Applicant herein leave to file Appeal out of time.
  5. That the costs of this application be provided for.



2. The grounds for the application bring out a confusing state of affairs. This is one where a judgment was delivered on 30th October, 2023 with a dismissal of the claimant's case with costs to the Respondents.
3. A few months down the line, and after delivery of judgment and an appeal by this Appellant, on 10th January, 2024, the appellant procured a decree indicating that judgment was entered in their favour and that the Respondent lost the case. The Appellants therein filed a notice of withdrawal of the appeal to which we objected for reasons that there were underhand dealings going on in the lower court.
4. It is the applicant's further case that she has since written to the Judiciary ombudsman to interrogate and intervene in the situation and further posits that due to the fact that these issues came to their knowledge on January, 2023 when the time to appeal had lapsed then applicant, should seek stay of execution and leave to appeal out of time.
5. A narration of the goings on in this matter is as follows;
  1. That the Judgment in this matter was delivered on the 30<sup>th</sup> October 2023 and the court dismissed the claimant's case with costs to the respondents.
  2. That the Appellant/Claimant proceeded and filed this appeal and filing its memorandum of appeal.
  3. That after a few months after the judgment was already delivered and the Appellants filed the instant appeal, on 10<sup>th</sup> January 2024 there was unclear and unexplained change of events as the Appellant procured a decree which indicated that judgment was entered in their favour and the Respondent lost the case.
  4. That the Appellant proceeded to file notice of withdrawal of the appeal which the Applicant object to for the obvious reasons that there was underhand dealings that were going on in the lower court case.
6. It is the applicant's penultimate case that she stands to suffer irreparable loss unless order of stay of execution issues in the circumstances. Again, the Claimant/Respondent will not suffer any prejudice if the orders sought are granted.
7. Lastly, she states that she is willing to abide by any directions of court pending appeal. Her timing of the application is also apt – within a reasonable time and without undue delay.
8. The Appellant/Respondent in a Replying Affidavit sworn on 15th February, 2024 agrees that he had sent counsel to hold his brief and judgment was entered against his client. They therefore filed the appeal.
9. The Appellant's avers that when they applied for the proceeding and on release of the suit file to the court registry, they realised that judgment had been entered in their favour. They accorded such error to the fact that the lower court had many matters on the due date and there was a possibility of human error in the circumstances.
10. The Respondent thereon went on to file a Notice of withdrawal of appeal. She in toto denies foul play considering that they never had a copy of the judgment and decree which they claim was altered.
11. The Applicant/Respondent in reply enters a supplementary affidavit in which she reiterates the grounds of her application and further interrogate brief answer to the same. She further submits as follows;



2. The Appellant further goes ahead in an attempt to justify the irregular overturning, alteration and changing of the judgment without any notice that the same was on "error" by the lower. Surprisingly these sentiments are coming from the bar / appellants whose decision was overturned in his favour and without notice from the court or the judicial officer,
3. ..., we submit that the irregular alteration of the judgment after pronouncing the same having called out the correct parties, the correct suit number was not an error as it is being propagated by the appellants but it was an intentional blunder violating the rights of the applicant to suffer loss and damages,
 

Indeed if there was any error the said judicial officer would have issued a notice or summoned all the parties and advised on the said error but to date that has never been done which justifies our submissions that it was not an error but an intentional illegal alteration of judgment only meant to violate the rights of the applicant.
12. It is the Respondent/Applicant's case that the Appellant/Respondent's notions of error do not arise and are not backed by any sense or evidence.
13. The Respondent/Applicant crowns her submission by relying on the authority of Nairobi HCC No. 591 of 2012 *Yamko Yadpaz Industries Limited v Kalka Flowers Limited* where on 30th April 2013 the court observed as follows;
 

Havelock J quoted with approval *Kamau Mwangi v Wambui Kariuki* (2012) KLR where Mwilu J (as he then was) quoted from the celebrated case of *Abraham Kiptanui v Delphis Bank LTD & anor.* HCCC No. 1864 OF 1991 (Unreported) as follows;

"Once it is established that a judgment on record is irregular it must be set aside as of right. There are no two ways about it. The same is not susceptible to any variation. Its only fate is vacation from record. Such a judgment is not set aside as a matter of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process itself...."
14. A look at the respective cases of the parties tilts this application in favour of the Respondent/Applicant. This is because she has demonstrated a case worthy of turning this court's discretion in her favour.
15. The Respondent/Applicant has demonstrated a case of unusual toppling of a judgment of court issued on 30th October, 2023 in very unclear circumstances. This creates a scenario where investigations and scrutiny of the circumstances underlining these happenings must take place. This would require time and space which would necessitate that stay of execution of the entire judgment and consequential orders delivered in respect of the judgment of 30th October, 2023 aforesaid be made.
16. I am therefore inclined to allow the application with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 26TH DAY OF FEBRUARY 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. Mr. Mwangi instructed by M. P. Mwangi & Company Advocates for the applicant/Respondent.
2. Mr. Gomba instructed by Charles Gomba & Company Advocates for the Appellant/Respondent.

