



**Ndiritu v Kimotho (Miscellaneous Application E120 of 2024)
[2025] KEELRC 901 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 901 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E120 OF 2024**

**S RADIDO, J
MARCH 20, 2025**

BETWEEN

PAUL TUMUTI NDIRITU APPLICANT

AND

WILFRED KIMILI KIMOTHO RESPONDENT

RULING

1. In a Ruling delivered on 26 July 2024, the Court dismissed a Motion dated 13 March 2024 by Paul Tumuti Ndiritu (the applicant) seeking orders directing Wilfred Kimili Kimotho (the Respondent) to report an accident in the workplace to the Director, Occupational Safety and Health and find had committed a criminal offence by failing to notify the Director of the accident.
2. Following the dismissal of the Motion, the applicant filed another Motion dated 4 October 2024, seeking orders:
 - i. ...
 - ii. That pending inter-partes hearing and determination of this application, there be a stay of execution of the Ruling delivered on the 30th July 2024 by the Honourable Justice Nzioki wa Makau.
 - iii. That pending the hearing and determination of the appeal, there be a stay of execution of the Ruling delivered on the 30th July 2024 by the Honourable Justice Nzioki wa Makau.
 - iv. That the costs of this application abide the outcome of the intended appeal.
3. The grounds in support of the Motion were that the Court had delivered a Ruling in favour of the Respondent; execution was imminent; the applicant had filed a Notice of Appeal against the Ruling; the appeal had a reasonable probability of success and the appeal would be rendered nugatory if a stay was not granted and that the interest of justice tilted in favour of granting a stay of execution.



4. The Respondent filed a replying affidavit on 14 October 2024 in opposition to the Motion.
5. The Respondent deponed in the affidavit that the Court had issued a negative order which could not be stayed; he had filed a Bill of Costs (since taxed); that the applicant had approached the Court with unclean hands and that the Motion was bad in law and an abuse of the court process.
6. The Court gave directions on the Motion on 29 January 2025.
7. However, on 7 February 2025, the applicant filed a Notice to Withdraw and Discontinue the Motion.
8. The Court will in the circumstances mark the Motion dated 4 October 2024 as withdrawn.
9. The Court must however note that the Motion under consideration was a non-starter in law because the Motion which the applicant sought to stay was dismissed. The dismissal order was a negative order that cannot be stayed.
10. The Court also notes that the Ruling was delivered on 26 July 2024 and not 30 July 2024.

Orders

11. The Motion dated 4 October 2024 is marked as withdrawn with costs to the Respondent. The file is marked as closed.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For applicant - Eliud Maina Karanja Advocates

For Respondent - Raydon Mwangi & Associates Advocates

Court Assistant - Wangu

