



Akello v Rural Development Solutions Limited (Employment and Labour Relations Cause 554 of 2015) [2025] KEELRC 878 (KLR) (19 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 878 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 554 OF 2015**

**B ONGAYA, J
MARCH 19, 2025**

BETWEEN

TONY BEN OLANG AKELLO CLAIMANT

AND

RURAL DEVELOPMENT SOLUTIONS LIMITED DEFENDANT

RULING

1. The defendant/applicant filed a Notice of Motion application dated 26.02.2025 through Mose Nyambega & Co Advocates. The application was under order 22 rule 22 & 25, order 40, order 45, order 51 rules 1 & 2 of the Civil Procedure Rules 2010, sections 1A, 1B, 3A, & 63(e) of the Civil Procedure Act, Articles 25(c), 50(1), and 159(d) of the Constitution of Kenya 2010 and all enabling laws. The applicant prayed for the following orders:
 - a. That the Honourable Court be pleased to certify the matter urgent and fit to be heard ex-parte in the first instance.
 - b. That there be stay of execution and or carting away of assorted good proclaimed by M/S Vision Root Auctioneers pending hearing of this application inter-partes.
 - c. That the Honourable Court be pleased to lift the proclamation and or attachment levied on the applicant's household items by M/S Vision root auctioneers on the 21.02.2025 pending hearing of this application.
 - d. That there be stay of execution of the decree dated 31.01.2020 and warrants of attachment thereto dated 15.02.2025 pending hearing and determination of this application.
 - e. That there be stay of warrants of attachment, decree and or execution or the decree and judgment of the Honourable Court pending the hearing and determination of the applications dated 26.10.2022 and 19.10.2023.



- f. That this honourable court be pleased to issue directions with respect to the Notice of motion application dated 26.10.2022 and 19.10.2023 for substantive hearing and determination.
 - g. That the costs of the application be provided for.
2. The application is supported by the affidavit of Svein Rene and upon the following grounds:
- a. That the plaintiff/respondent has commenced execution of judgment and decree of the court on the basis of material non-disclosure without disclosing that there exists an application dated 19.10.2023 which is still pending determination before the Honourable Court.
 - b. The warrants of attachment have been processed and execution of the same is impending and likely to occur anytime to the detriment of the defendant/applicant.
 - c. On 19.10.2023 the applicant filed a Notice of Motion Application of even date set therein a raft of prayers which required the discretion and consideration by court on merit as the same raises substantive issues affecting the execution process herein.
 - d. The said application dated 19.10.2023, the respondent has actively participated in by filing a response and written submissions and the same awaits a ruling to be delivered.
 - e. The said execution at this stage is thus premature and amounts to an abuse of the court process as there's a pending application awaiting delivery of a ruling.
 - f. The said notice of motion application dated 19.10.2023 is and was meant to actualize on an error apparent on the face of the judgment; has the honourable court failed to consider or determine the counter-claim which was duly pleaded.
 - g. The omission on the part of the court to pronounce itself on the counter-claim created a material irregularity and injustice as it left part of the claim unresolved.
 - h. The execution process commenced herein flies the face of the law and deserves to be stayed and or set aside to allow for determination of the Notice of motion application dated 19.10.2023 and further directions of the court are issued regarding the substantive claim in the interest of justice.
 - i. This application has been brought without delay.
 - j. It is mete, just and in the wider interests of justice that the applicant herein be given an opportunity to pursue the application herein and the application dated 19.10.2023.
 - k. No prejudice whatsoever or at all shall be occasioned upon the plaintiff/respondent if the orders sought herein are allowed.
3. In turn the claimant/respondent filed the Replying affidavit of Tony Ben Olang' Okello sworn on 04.03.2025 and through Owino Bukachi & Company advocates. It was stated and urged as follows:
- a. That on 17.01.2020 judgment was entered in the respondent's favour for a sum of Kshs 4,000,000 with interest from 09.04.2015.
 - b. On 23.01.2020 the applicant filed a notice of appeal which it has failed to prosecute and went ahead to file an application for review as an afterthought.
 - c. On 24.05.2021 the respondent filed an application seeking various prayers including stopping directors of the applicant from disposing motor vehicle registration number KBZ 984T; directing the directors to table list of assets of the judgment debtor at the time of dissolution;



directing the directors to produce books of accounts and that the said directors be held personally liable to pay an accumulated decretal sum and cost in the sum of Kshs 6,304,110/=

- d. On 13.08.2021 the court issued a ruling on the application dated 24.05.2021 barring the applicant from disposing motor vehicle registration number KBZ 984T; ordered the applicant directors to table the list of assets at the time of dissolution; ordered the attendance and cross-examination of the directors; and production of books of accounts for the purpose of satisfying the decree.
 - e. On 26.10.2022 the applicant filed an application to set aside and/review a non-existent judgment dated 21.06.2021.
 - f. On 31.08.2023 the court delivered a ruling holding the applicant directors jointly and severally liable.
 - g. On 19.10.2023 the defendant filed an application seeking to set aside the ruling delivered on 31.08.2023.
 - h. On 01.11.2023 the court directed that there be a stay of execution pending inter parties hearing on fresh orders subject to the applicant depositing in a joint parties advocates interest earning account the full decretal sum by close of 24.11.2023.
 - i. The applicant has approached this court with unclean hands as they have not complied with the orders of the court.
 - j. The applications dated 26.10.2022 and 19.10.2023 were to be heard subject to the applicant depositing the entire decretal sum in court failure to which the respondent was granted leave to proceed with execution.
 - k. The application is a delay tactic meant to delay realization of justice. The delay is highly inordinate considering that the suit was filed in the year 2015, judgment delivered in January, 2020.
 - l. Granting the stay will be prejudicial to the respondent as it unfairly delays his right to enjoy the fruits of his judgment since its delivery in 2020.
4. The parties filed their respective submissions. The Court has considered parties' respective positions and returns as follows.
- a. As urged and submitted for the claimant/respondent, on 01.11.2023 the applicant's earlier application dated 19.10.2023 was listed and in presence of counsel for both parties the Court ordered inter-alia "2. There be stay of execution pending inter-partes hearing or further orders subject to applicants depositing in joint parties' advocates' interest earning account the full decretal sum by close of 24.11.2023." The case was listed on 30.11.2023 and the Court ordered thus, "1. The time to deposit the money in order (2) given on 01.11.2023 is hereby extended to by 02.05.2024." it was further ordered that the case be mentioned on 07.05.2024 to confirm compliance and for directions on the applicant's applications of 26.10.2022 and 19.10.2023. The case was listed on 07.05.2024 and after listening to counsel for both parties it was ordered "I have considered the application dated 19.10.2023 and the Directors are given up to 15.08.2024 to satisfy the decree failing execution to issue in accordance with the law." The flow of events was that temporary stay of execution was ordered to enable the directors to settle the decree but which they appear to have failed to settle and no offer of arrangements to settle was made. Accordingly, execution appears to have issued and hence the application dated 26.02.2025 was filed.



- b. As submitted for the claimant the execution to be stopped issued per Court's orders which have not been set aside.
- c. On 31.07.2023 M.Onyango J delivered a ruling and ordered thus, "That Svein Rene, Max Joachim Seifert, Eunice Adhiambo, Danson Ligare Lung'atso, Sissel Austra Rene, being former directors of the Respondent herein and having voluntarily dissolved the said company during the pendency of this suit, are jointly and severally personally liable to pay the Applicant as per the decree of this Court."
- d. It appears to the Court that execution has been initiated and is continuing per the foregoing mentioned Court orders and which have not been set aside in a review or appeal.
- e. The directors were given up to 15.08.2024 to satisfy the decree failing execution to issue in accordance with the law. The 15.08.2024 came and went and no steps were taken until the impugned execution commenced and then the instant application of 26.02.2025 was filed. The Court finds that the instant application for review was filed after inordinate delay and it has not disclosed any known ground for review. It appears to the Court, as is urged for the claimant, that the application has been filed to merely delay or frustrate the claimant's enjoyment of the fruits of his successful litigation. In any event, the applicant would be at liberty to move to the Court of Appeal if deemed appropriate.
- f. There is another compelling reason why the instant application must collapse. The notice of motion dated 19.10.2023, the one of 26.02.2025 and even an earlier one dated 26.10.2022 are all said to be filed for and on behalf of the respondent in the suit but as of 31.07.2023 it is on record that the Company had been dissolved in June 2019. How then can an application be filed for a none existing Company or party? As the applicant appears not to exist at all, the application is liable to dismissal with no costs.

In conclusion the application dated 26.02.2025 is hereby determined with orders as follows:

- a. The application is dismissed with no costs.
- b. The applicant at liberty to appeal or move the Court of Appeal as appropriate and there be a temporary stay of execution until 04.04.2025, as may be necessary.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 19TH MARCH, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

