



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kaguthi & 11 others v Principal Secretary, Ministry of Interior  
and Coordination of National Government & another (Petition  
84 of 2020) [2025] KEELRC 798 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 798 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**PETITION 84 OF 2020**

**S RADIDO, J**

**MARCH 13, 2025**

**BETWEEN**

**JOSEPH KAGUTHI ..... 1<sup>ST</sup> PETITIONER**  
**DR SALI NDEMO ..... 2<sup>ND</sup> PETITIONER**  
**DR FRANCIS K SANG ..... 3<sup>RD</sup> PETITIONER**  
**IBRAHIM DUALE ..... 4<sup>TH</sup> PETITIONER**  
**MAJOR (RTD) RAMA NDEGWA MWANGOME ..... 5<sup>TH</sup> PETITIONER**  
**NURIA ABDULLAHI ..... 6<sup>TH</sup> PETITIONER**  
**LT COL (TRD) FRANCIS CHARLES MUGAMBI ..... 7<sup>TH</sup> PETITIONER**  
**ZIPPY NZISA MUSYIMI ..... 8<sup>TH</sup> PETITIONER**  
**NANCY WAMBUI GACHOKA ..... 9<sup>TH</sup> PETITIONER**  
**IMANUEL OCHOR IMANA ..... 10<sup>TH</sup> PETITIONER**  
**PURITY SEIN KARARIET ..... 11<sup>TH</sup> PETITIONER**  
**CAREN WAKOLI ..... 12<sup>TH</sup> PETITIONER**

**AND**

**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND COORDINATION  
OF NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**  
**HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**



## RULING

1. In a judgment delivered on 27 October 2022, the Court ordered as follows:
  - a. Underpayment to the 2<sup>nd</sup> to 11<sup>th</sup> Petitioners – Kshs 11,704,000/- each making a total of Kshs 117,040,000/-.
  - b. Kshs 1,000/- to each Petitioner as a token award for the infringement of their constitutional rights – total of Kshs 10,000/-.
  - c. Gratuity at the rate of 31% of the gross salary for the 22 months of service – to be calculated by the 1<sup>st</sup> Respondent and paid within 30 days of the judgment in default of which interest will accrue on the sums for gratuity at commercial rates of interest from the date of filing suit till payment in full.
  - d. Costs of the suit.
  - e. Interest on the sums in a) and b) above at court rates from the date of judgment till payment in full.
2. On or around 5 December 2022, the Petitioners filed a Motion seeking a review of the judgment to correct computations of the sums awarded.
3. In a Ruling delivered on 25 April 2023, the Court allowed the review application by correcting the computation errors in the judgment.
4. The Ruling did not please the Respondents and they filed a Notice of Appeal against the Ruling on the same day.
5. The Respondents also moved the Court of Appeal to grant a stay of execution of the Judgment of 27 October 2022 and the Ruling of 25 April 2023 in this Petition, as well as a stay of proceedings in a related matter, High Court Judicial Review Misc Suit No. E065 of 2023.
6. On 22 June 2023, the Respondents lodged a Notice of Appeal against the judgment delivered on 27 October 2022. This was after securing leave from the Court of Appeal on 20 June 2023.
7. The Respondents also moved the Court to stay the execution of the Judgment and Ruling.
8. On 9 February 2024, the Court of Appeal delivered a Ruling with respect to the Motion by Respondents seeking stay of execution and stay of proceedings and ordered:
  1. Pending the hearing and determination of Civil Appeal No. E298 of 2023 –
    - a. There shall be a stay of execution of the judgment and ruling delivered on 25<sup>th</sup> April 2022 and 27<sup>th</sup> October 2022 respectively in ELRC No. 84 of 2020.
    - b. There shall be a stay of execution of proceedings in the High Court in HC JR Miscellaneous Application No. E065 of 2023.
  2. The costs of this application shall abide the appeal.
9. On 12 November 2024, the 1<sup>st</sup> Petitioner filed a Motion dated 22 October 2024, seeking orders:
  - i. ...



- ii. That this Honourable Court be pleased to grant leave to the firm of M.M. Gitonga Advocates LLP to come on record for the 1<sup>st</sup> Petitioner/applicant in place of M/S J.A. Guserwa & Co. Advocates.
  - iii. That this Honourable Court be pleased to review its judgment delivered on October 27, 2022, and the resultant orders thereof, in so far as the Court omitted to include the 1<sup>st</sup> Petitioner in the award of underpayment awarded to the 2<sup>nd</sup> to 11<sup>th</sup> Petitioners.
  - iv. That this Honourable Court be pleased to review its judgment delivered on October 27, 2022, and the resultant orders thereof, in so far as the Court omitted/failed to precisely state whether the award of gratuity applies to the 1<sup>st</sup> Petitioner.
  - v. That this Honourable Court be pleased to make such or further orders as the circumstances of this case may require.
  - vi. That costs of this application be provided for.
10. The primary grounds in support of the Motion were that the Rules of this Court allowed this Court the discretion to review a judgment; the judgment sought to be reviewed was ambiguous; the Court committed an error or mistake by failing to indicate whether the 1<sup>st</sup> Petitioner was entitled to the awards and that the interests of justice favoured a review of the judgment.
11. When served with the Motion, the Respondents filed a Notice of Preliminary Objection on 16 January 2025 contending:
- i. That the application is incompetent, bad in law and an abuse of this Honourable court process for reasons that there is a Court of Appeal Order issued on 9<sup>th</sup> February 2024 in Civil Application No. E298 of 2023 (copy attached) which stayed execution of the judgment and Ruling delivered on the 25<sup>th</sup> April 2022 and 27<sup>th</sup> October 2022 in ELRC No. 84 of 2020 as well as stay of proceedings in the High Court in HC Miscellaneous Application No. E065 of 2023 pending hearing and determination of Civil Appeal No. E298 of 2023.
  - ii. That the said Appeal, Civil Appeal No. E298 of 2023, has not been heard and determined.
  - iii. That on 24<sup>th</sup> September, 2024, parties appeared before Justice Nduma Nderi where the existence of the Court of Appeal Order was brought to the judge's attention and the judge directed that in line with the Court of Appeal Order, execution is stopped and the matter be mentioned on 3<sup>rd</sup> February, 2025 to confirm progress in the Court of Appeal in Civil Appeal No. E 096 of 2023.
  - iv. That the application is a total abuse of this Honourable Court process and should be struck out with cost henceforth.
  - v. That the said Application is bad in law, mischievous, misconceived and made in bad faith.
  - vi. That it is in the interests of justice that the Applicant's Applications dated 22<sup>nd</sup> October 2024 be dismissed with costs.
12. The Court gave directions on the Motion and Preliminary Objection on 27 January 2025.
13. Consequently, the 1<sup>st</sup> Petitioner filed his submissions on 4 March 2025 (should have been filed and served before 14 February 2025), and the Respondents on 28 February 2025.



14. The Court has considered the Motion, affidavit in support, Notice of Preliminary Objection and submissions and makes the following determinations.
15. One, the 1<sup>st</sup> Petitioner was part of the applicants who filed a Review Motion dated 5 December 2022 and which Motion was determined by the Court on 25 April 2023.
16. Two, the 1<sup>st</sup> Petitioner is the 1<sup>st</sup> Respondent in Nairobi Civil Appeal No. E298 of 2023.
17. Three, the Court of Appeal granted a stay of execution of the judgment the 1<sup>st</sup> Petitioner desires to review.
18. Four, section 80 of the *Civil Procedure Act* curtails the right to bring a review application from a decree which has been appealed. At the time the 1<sup>st</sup> Petitioner was filing the Motion, he was aware that there was a pending appeal before the Court of Appeal.
19. Last, a party is allowed to choose an advocate of choice to represent them in the course of litigation. After judgment has been delivered, leave of the Court is required for an advocate to come on record.
20. This Court does not understand the stay order granted by the Court of Appeal as limiting the 1<sup>st</sup> Petitioner's right to choose an advocate to represent him at this stage of the proceedings, despite this Court having determined or declared the rights of the parties.

#### **Orders**

21. The sum total of the above determinations is that the Motion dated 22 October 2024 lacks merit save for an order allowing the firm of M.M. Gitonga Advocates LLP to come on record for the 1<sup>st</sup> Petitioner in this Petition file.
22. The 1<sup>st</sup> Petitioner did not file submissions within agreed timelines and he is condemned to pay the Respondents' costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For applicant Mr Njiru instructed by M.M. Gitonga Advocates LLP

For Petitioners Mr Museve instructed by JA Guserwa & Co. Advocates

For Respondents Ms Akuno, Senior State Counsel

Court Assistant Wangu

