



**Transport Workers Union [K] v Lochab Brothers Limited (Cause 414 of 2013) [2025] KEELRC 710 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 710 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE 414 OF 2013**  
**J RIKA, J**  
**MARCH 7, 2025**

**BETWEEN**  
**TRANSPORT WORKERS UNION [K] ..... CLAIMANT**  
**AND**  
**LOCHAB BROTHERS LIMITED ..... RESPONDENT**

**RULING**

1. In a judgment delivered on 28<sup>th</sup> March 2014, the Trial Court [Ongaya J] ordered the Respondent to pay to the Claimant, accrued and unpaid trade union dues from the Respondent's own funds, under Section 19[6] of the *Employment Act*.
2. The Respondent was also condemned to pay the costs of the Claim.
3. The trade union dues were quantified at Kshs. 4,047,165.60, and the costs taxed at Kshs. 225,259. 75.
4. The Respondent was aggrieved by the judgment, and lodged an Appeal No. 46 of 2020 at the Court of Appeal, Nakuru.
5. The Respondent was granted an order of stay of execution pending appeal, on the condition that it deposits the decretal sum in Court. It complied, and deposited the security on 15<sup>th</sup> January 2018.
6. The taxed costs were deposited in the Claimant's Advocates' bank account, on 8<sup>th</sup> November 2021.
7. The Claimant successfully applied to have the decretal sum released to it, while the appeal was still pending hearing and determination.
8. The appeal culminated in a judgment in favour of the Respondent. On 26<sup>th</sup> July 2024, the Court of Appeal decreed that: the appeal was merited; the Trial Court had no basis for granting the orders made in favour of the Claimant; and, the entire judgment, all consequential orders and decree ensuing therefrom, was set aside.



9. Against this background, the Respondent filed an application dated 16<sup>th</sup> August 2024, asking for orders of restitution. The Respondent seeks refund of the decretal sum with costs, paid to the Claimant, with interest at the rate of 14% p.a. from the date of payment.
10. The application is founded on the affidavit of the Respondent's Director, Ranjit Singh Lochab, sworn on 16<sup>th</sup> August 2024.
11. It is opposed through the affidavit of the Claimant's Secretary-General Dan Mihadi, sworn on 18<sup>th</sup> November 2024.
12. The Claimant's position is that judgment was made in favour of the Claimant, on 28<sup>th</sup> March 2014. The Respondent filed a notice of appeal on 30<sup>th</sup> April 2014, clearly outside the prescribed period of 14 days.
13. The Respondent abandoned the appeal and pursued an application for review of Judgment. This application was not prosecuted.
14. The Claimant states that there was further review, and the Court directed the Respondent to pay to the Claimant, the sum of Kshs. 2,655,400. There was no appeal against this reviewed judgment.
15. Subsequently the Respondent obtained orders for conditional stay of execution pending appeal, in a ruling dated 30<sup>th</sup> April 2018. The decretal sum and accrued interest was deposited in Court.
16. The Secretary-General explains that, the Respondent made 6 applications for stay of execution and 2 for review of judgment, which were all dismissed.
17. The Respondent was to deposit the decretal sum, on or before 17<sup>th</sup> November 2016, but failed to do so.
18. Without being clear when the decretal sum was deposited, the Secretary-General states that the sum of Kshs. 4,047,160 was paid out in May 2019, 3 years after the order for deposit was made, and paying out, was as a result of non-compliance by the Respondent, and the Claimant cannot be blamed.
19. He submits that the Claimant raised the issue on the late filing of the notice of appeal, during the hearing of the appeal, but that the Court of Appeal did not rule on the issue.
20. The Claimant consequently, has instructed its Advocates to apply for review of the Court of Appeal judgment.
21. The appeal was filed 7 years after the judgment of the Trial Court.
22. Lastly, the Secretary- General submits that the decretal sum has been spent on union activities, and is not available for restitution.
23. It was agreed by the Parties that the application is considered and determined, on the strength of their affidavits and submissions.

**The Court Finds: -**

24. The affidavit filed by the Secretary-General in response to the application, raises very weak grounds, in justifying why the Respondent should not have its money back.
25. Issues about the notice of appeal having been filed late; the appeal being filed 7 years after judgment; the Respondent filing multiple applications for review and stay of execution; and the decretal sum having been expended on trade union activities, are matters completely irrelevant to the application for restitution.



26. If there is any application pending at the Court of Appeal after its judgment, again that is not relevant to the application for restitution.
27. There is common ground that judgment was delivered in favour of the Claimant by the Trial Court; that judgment was overturned on appeal; and the Court of Appeal set aside the judgment in its entirety, with the decree and all consequential orders.
28. The Claimant does not dispute that it was paid the decretal sum, or that the costs were paid to its Advocates.
29. Judgment upon which these payments were made, was reversed in its entirety, and there is no reason for the Claimant to retain money which does not belong to it.
30. It is immaterial that the Claimant has spent the money on its own activities. It spent money which does not belong to it. It was aware that there was an appeal pending at the Court of Appeal, which could go the way of either party.
31. It deliberately and successfully applied to remove the decretal sum from the account of the Court, where it had been securely deposited, pending the outcome of the appeal. This, with the benefit of the hindsight, was imprudent. The Claimant ought to have been patient, and let the decretal sum remain in the account of the Court, until the Court of Appeal pronounced itself on the matter.
32. If the Claimant is allowed to retain the money, it would mean that the appeal was a meaningless judicial exercise, and a pyrrhic victory for the Respondent.
33. In *Oyatsi v. Nzoia Sugar Company Limited* [2022] KEIC 1 [KLR], this Court faulted the Claimant therein, who had a judgment granted in his favour by the Trial Court overturned on appeal. The Court faulted him, for holding that the judgment given by the Court of Appeal against him was invalid for reasons such as have been advanced by the Claimant herein. Oyatsi like the Claimant herein, had asked the Court to disallow an order of restitution.
34. The Industrial Court had awarded Oyatsi Kshs. 13,646,271. The Court of Appeal reduced the award to Kshs. 2,879,189, and an order of restitution of the balance of Kshs. 8,061,100 was granted against the Claimant.
35. The E&LRC held that although it was submitted by the Claimant that he had applied for “recall and cancellation” of the judgment of the Court of Appeal, much in the same vein as the current Claimant, no orders of review, or “recall and cancellation” of the judgment of the Court of Appeal, had been placed before the Trial Court, to justify non-restitution.
36. As held in *Oyatsi*, this Court cannot ignore the presence of the judgment issued on appeal. It is a valid and binding judgment, granted by a superior jurisdiction, and if it is legally subject to review, it is not for this Court to say. If there were procedural infirmities leading to the judgment of the Court of Appeal, those are matters that ought to have been addressed on appeal.
37. The role of this Court is to abide by the judgment of the Court of Appeal, which reversed in its entirety, the judgment of the Trial Court, upon which the Claimant received the decretal sum and costs.
38. Restitution is a remedy to prevent unjust enrichment. It is a remedy for disgorgement of a benefit which is found to have been obtained without a legal basis. The money taken by the Claimant, and allegedly used in running its activities, does not belong to it. It must be returned to its rightful owner. The application for restitution, filed by the Respondent is merited.

It is ordered: -



- a. The application filed by the Respondent dated 16<sup>th</sup> August 2024 is allowed.
- b. The Claimant shall immediately refund the Respondent the decretal sum of Kshs. 4,047,160.50, with interest at the rate of 14% p.a. from 15<sup>th</sup> January 2018, till payment is made in full.
- c. The Claimant shall immediately refund the Respondent the sum paid as costs at Kshs. 225,259.75, paid on 8<sup>th</sup> November 2021, together with interest at the rate of 14% p.a. from 8<sup>th</sup> November 2021, till payment is made in full.
- d. This file shall be marked as closed, upon the full restitution.
- e. No order on the costs of the application.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAKURU, THIS 7<sup>TH</sup> DAY OF MARCH 2025.**

**James Rika**

**Judge**

