



**Mwangi v Happy Go Limited (Cause 229 of 2018)  
[2025] KEELRC 679 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 679 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 229 OF 2018  
AN MWAURE, J  
MARCH 6, 2025**

**BETWEEN**

**GEORGE MWANGI ..... CLAIMANT**

**AND**

**HAPPY GO LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant/Applicant herein filed two applications dated 6<sup>th</sup> May 2024 and 26<sup>th</sup> June 2024.
2. In the Notice of Motion dated 6<sup>th</sup> May 2024 brought under Articles 50 and 159 of *the Constitution* and all other enabling provisions of the law, the Claimant/Applicant is seeking orders that:
  1. Spent
  2. The Honourable court be pleased to give an order of review setting aside the Honourable court ex-parte orders granted on 14<sup>th</sup> March 2023.
  3. Leave be granted to the Claimant/Applicant to file his response to the Respondent's application dated 3<sup>rd</sup> March 2023, and the same be set down for directions before the Honourable court as its disposal.
  4. Costs of this application be provided for.
3. The Claimant/Applicant stated the following grounds, reasons and argument to support the application as follows:
  1. The Claimant/Applicant was not served properly and was not aware of the application until 13<sup>th</sup> March 2023 when informed by Beta base auctioneers.
  2. The Respondent served the Claimant/Applicant with the application on 15<sup>th</sup> March 2023 after the hearing.



3. The Claimant/Applicant was acting in person after his previous advocate signed a consent to hand over the case on 2<sup>nd</sup> February 2023.
  4. The decretal sum awarded remains unpaid, and therefore, the Claimant/Applicant ought to be allowed to enjoy the fruits of his judgment.
  5. The Claimant/Applicant ought not to be condemned unheard.
  6. It is only fair and in the wider interest of justice that the ex-parte proceedings herein taken be set aside and allow the Claimant/Applicant to articulate his case and the auctioneer be allowed to undertake his mandate.
4. The application is supported by the Claimant/Applicant's supporting affidavit, who is acting in person.
  5. The Claimant/Applicant filed a Notice of Motion dated 26<sup>th</sup> June 2024 under the same provisions as cited in the other application and all other enabling provisions of the law. The Claimant/Applicant is seeking for the following orders that:
    1. Pending the hearing and determination of this application, inter-parties Honourable Justice D. Nderitu recuses himself and paves way for investigations into the circumstances on how the orders on the application dated 3<sup>rd</sup> March 2023 were issued without the Respondent filing a decree in court.
    2. This Honourable Court set aside the ex-parte proceedings taken on the application dated 3<sup>rd</sup> March 2023 without a decree filed by the Respondent.
    3. All proceedings emanating from the application dated 3<sup>rd</sup> March 2023 and the order issued be declared null and void.
    4. The conduct of the judge, lawyers and the Respondent to this case to be investigated.
    5. The Claimant/Applicant be allowed to execute the orders issued on 28<sup>th</sup> November 2022 ruling by allowing Betabase Auctioneers to collect the outstanding amounts for damages awarded on 26<sup>th</sup> April 2022 as no decree has been presented by the Respondent that the outstanding amounts have not been satisfied.
    6. The costs of this application be provided for.
  6. The application stated is based on the following grounds that:
    - a. The Claimant/Applicant has been a victim of court orders where his rights to a fair hearing were infringed, and justice in the court process has been overlooked.
    - b. The Respondent failed to produce a decree regarding the application dated 3<sup>rd</sup> March 2023, alleging the judge colluded with the Respondent to grant it orders in its favour against the ruling delivered on 28<sup>th</sup> November 2022.
    - c. The Judge stated in his ruling regarding the application dated 3<sup>rd</sup> March 2023 that he had seen that the decree was satisfied, and yet the Claimant/Applicant is to see any production of the said decree
    - d. The Claimant/Applicant urges this Honourable Court to reverse/rescind the compromised orders issued regarding the application dated 3<sup>rd</sup> March 2023 and allow him to continue



with the execution by allowing Beta base auctioneers to continue the mandate of collecting outstanding amounts.

### **Claimant/Applicant's case**

7. The Claimant/Applicant avers that he filed a case against the Respondent for unlawful dismissal.
8. The Claimant/Applicant avers that while the case was ongoing, he relocated to Mombasa as he stated that his life was in danger, alleging that the Respondent was threatening his life.
9. The Claimant/Applicant avers that he reported intimidation and threats to the police.
10. The Claimant/Applicant avers that the Honourable Court (Justice D. Nderitu) entered judgment in his favour, finding he was unlawfully dismissed and awarded him Kshs. 2,509,752/= which was subjected to statutory deduction under Section 49(2) of the *Employment Act*.
11. The Claimant/Applicant avers that the Respondent filed an application for stay of execution dated 16<sup>th</sup> May 2022, and the Honourable Court dismissed it vide a ruling dated 28<sup>th</sup> November 2022 as the Respondent did not fulfil the conditions of stay of execution.
12. The Claimant/Applicant avers that the Respondent filed an application dated 3<sup>rd</sup> March 2023 seeking stay of execution prohibiting the attachment of its properties in relation to the ruling delivered on 28<sup>th</sup> November 2022.
13. The Claimant/Applicant avers that he was not aware of the application as he was not served with the same.
14. The Claimant/Applicant avers that the Honourable Court issued orders for the application to be served upon him, but he was not served.
15. The Claimant/Applicant avers that the Respondent alleged that it had fully satisfied the decree by showing bank statements showing that the money was deposited in his account.
16. The Claimant/Applicant avers that the Honourable Court did not see any response and granted orders of the application as prayed.
17. The Claimant/Applicant avers that he filed an application for review dated 27<sup>th</sup> March 2023, which he filed in person, seeking the orders issued to the application dated 3<sup>rd</sup> March 2023 to be set aside and allow him to respond to the application as he was not served.
18. The Claimant/Applicant avers the Honourable Court dismissed his application vide ruling dated 16<sup>th</sup> November 2023 stating that he could not act in person as he had advocates on record to represent him and he had to comply with the law first in terms of representation.
19. The Claimant/Applicant avers that the Respondent wanted to defraud him by using the children's court for children's maintenance.
20. The Claimant/Applicant avers that he filed an application dated 17<sup>th</sup> January 2024 through his advocates Okwiri & Co. Advocates seeking an order for stay of the ruling on 14<sup>th</sup> March 2023.
21. The Claimant/Applicant avers as the result of the application dated 17<sup>th</sup> January 2024 not being heard, he filed an application dated 26<sup>th</sup> June 2024 seeking the recusal of the Judge.
22. The Claimant/Applicant avers that the judge, the advocates and the Respondent have colluded with each other, frustrating this cause.



## **Respondent's response**

23. In opposition to the two applications, the Respondent filed two replying affidavits, both sworn on 4<sup>th</sup> November 2023 and filed in court on 6<sup>th</sup> November 2024.
24. The Respondent avers that there was no notice to act in person, and at the time of service of the application dated 3<sup>rd</sup> March 2023, as the firm of Mutisya Mwanzia & Odeng Advocate was representing the Claimant/Applicant and they were properly on record.
25. The Respondent avers that the Claimant/Applicant's advocates were served via electronic mail on 8<sup>th</sup> March 2023, and the said advocates did not attend court when directions were given allowing the application dated 3<sup>rd</sup> March 2023.
26. The Respondent avers that the Honourable Court sat on 14<sup>th</sup> March 2023 as per court proceedings, hence the issuance of the orders allowing the application dated 3<sup>rd</sup> March 2023.
27. The Respondent avers that the decretal sum was deposited to the Claimant/Applicant's account less the statutory deduction, and there was a deposit slip to confirm payment of the decretal sum.
28. The Respondent avers that the Claimant/Applicant alleges that it did not pay the entire sum, and the same was settled, which was confirmed by the Claimant/Applicant's advocates vide a letter dated 19<sup>th</sup> January 2023.
29. The Respondent avers that the grievances raised by the Claimant/Applicant on statutory deduction could not be raised before this Honourable Court and should have raised the said issue through an appeal or sought review within the prescribed timelines, which have lapsed.
30. The Respondent avers that the party to party costs were settled at Kshs.250,000/= vide a letter dated 19<sup>th</sup> January 2023.
31. The Respondent avers that the allegations raised about threats to the applicant were baseless as they were only to defame them, and the Claimant/Applicant's mission is to tarnish its name by raising misleading information.
32. The Respondent avers that the child maintenance case is a non-issue and ought to be restrained from baseless and senseless allegations as it cannot benefit from the child maintenance.
33. The Respondent avers that the Honourable Court struck out the application dated 27<sup>th</sup> March 2023 vide ruling dated 16<sup>th</sup> November 2023, which is res judicata, and the Claimant/Applicant did not appeal on the outcome of the ruling, instead filed multiple and frivolous applications.
34. The Respondent avers that the Claimant/Applicant has not established a just cause to warrant granting order of review, setting aside the orders issued on 14<sup>th</sup> March 2023.
35. The Respondent avers that it is keen in concluding the matter as litigation needs to come to an end.
36. Both applications were canvassed by way of written submissions.



## Claimant's submissions

37. The Claimant relied on Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules 2016 which provides as follows:
- “A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may, within reasonable time, apply for a review of the judgment or ruling-
- (a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
  - (b) on account of some mistake or error apparent on the face of the record;
  - (c) if the judgment or ruling requires clarification; or
  - (d) for any other sufficient reason.”
38. The Claimant submitted that the Respondent did not satisfy the decree and, at the same time, did not show proof of payment of the decree. The Claimant also submitted that he was awarded costs, and it trite law that costs form part of the decretal sum.
39. The Claimant submitted that no taxation has been done so far thus, the decretal amount has not been satisfied and locking him out from further execution, preventing him from enjoying the fruits of his judgment. The Claimant submitted that the monies remaining owed to him is the statutory deduction, and in a ruling delivered on 28<sup>th</sup> November 2022, the Respondent was ordered to pay the entire sum of Kshs.2,509,752/= within 30 days of the said ruling.
40. The Claimant relied on the case of *AM Bahaji & Company Limited V Kenya Ports Authority* [2020] KEHC 918 (KLR), where the court held that if the Income Tax Law intended to tax court decrees, the legislature would have explicitly stated so. The court cited the case of *Ocean Freight (E.A) Limited V Commissioner of Domestic Taxes* [2020] eKLR, emphasizing that tax laws should be interpreted strictly based on what is clearly stated, without presumptions. Since court decrees or the interest arising from them are not mentioned as taxable income, the court cannot assume otherwise. The court also cited the case of *Ibrahim Manyara V Registered Trustees of Agricultural Society of Kenya* [2014] eKLR, it was highlighted that subjecting court decrees to taxation could create confusion. The court clarified that a decretal amount does not qualify as income under the definition provided in Black's Law Dictionary, which defines income as returns from business, labour, or invested capital. The court reiterated that there is no law subjecting court decrees to taxation, and any attempt to do so should be explicitly stated by the legislature. If tax authorities wish to change their stance, they may do so, but currently, court decrees are not considered taxable income.
41. The Claimant submitted that the orders issued by the Honourable Court for stay of execution prohibiting attachment of the Respondent's properties should be set aside as the law under Rule 17(7) of the Employment and Labour Relations court(procedure) Rules 2016 read together with Rule 33 being sufficient reason and error or mistake apparent on the face of the record.
42. The Claimant/Applicant submitted that there was gross misconduct on the part of the judge who allowed late submissions of court documents which was to his disadvantage, and the judge stated that the Respondent had fulfilled the decree and there was no decree to show that hence, emailing the



- Nakuru court and the office Judiciary Ombudsman for the whereabouts of the said decree on the application dated 3<sup>rd</sup> March 2023 but both offices were unable to avail the said decree.
43. The Claimant/Applicant submitted that this Honourable Court stops the Respondent from using his excessive power and resources to prevent him from violating claimant's human rights.
  44. The Claimant/Applicant submitted that he is entitled to compensation in damages as he lost the opportunity for waiver on KRA tax penalties and interests and at the same time stating his life was in danger and so he is running in and out of the country.
  45. In conclusion, the Claimant/Applicant urges this Honourable Court to allow both applications as prayed.

### **Respondent's submissions**

46. The Respondent submitted that the Claimant/Applicant did not serve a notice to act in person after the judgment was delivered and did not disclose that he was acting in person. The Respondent argued that there was an affidavit of service showing that the Claimant/Applicant was duly served with the application dated 3<sup>rd</sup> March 2023 but failed to attend court.
47. The Respondent further argued that the Claimant/Applicant filed another application dated 15<sup>th</sup> January 2024 seeking similar orders but failed to attend court thus, the court file was closed, noting that the Claimant/Applicant had lost interest in prosecuting the said application.
48. The Respondent submitted that the decretal sum payable to the Claimant/Applicant was subjected to tax since it was an amount payable with respect to the employer-employee relationship and, therefore, the statutory deduction was deducted from the decretal sum. The Respondent relied on Section 19(1) (f) of the *Employment Act* and section 37 of the *Income Tax Act*, which require employers to deduct and remit tax from employees' earnings. Section 3(1) of the *Income Tax Act* provides that income tax applies to all income of a person, whether resident or non-resident, that accrued or was derived from Kenya. Additionally, Section 49(2) provide that awards are subject to statutory deductions.
49. The Respondent relied on the case of *Kioko Joseph (suing as the legal representative of the estate of Joseph Kilinda) V Bamburi Cement Ltd* [2017] eKLR the Court of Appeal stated as follows:

“In our opinion, the learned Judge correctly directed parties to involve the KRA, having appreciated that they disagreed on the assessment of P.A.Y.E due. KRA is the body charged with the duty of assessing, collecting revenue and enforcing laws relating to revenue in the country. It is therefore well suited to assist and guide in the assessment of the tax payable.”
50. The Respondent also relied on the case of *Lilian Mwendu Nzau Nzabu V Trustees and Office Bearers of Diocese of Anglican Church of Kenya* [2018] eKLR where the court stated NSSF contributions are statutory and must be collected by the National Social Security Fund Board, which has the authority to prosecute, charge interest and penalties, and file suit for recovery from defaulting employers. Therefore, the Claimant's only option is to report to NSSF for collection from the Respondent. Consequently, the payment is not due to the Claimant, resulting in the dismissal of the claim.
51. The Respondent submitted that the decretal sum, together with the costs, were settled. The letter dated 19<sup>th</sup> January 2023 shows the said preposition that costs were paid to the claimant's advocates Mutisya Mwanza & Odeng advocates. The Respondent argued that it cannot bear the costs for every advocate that represents the Claimant/Applicant, and costs are usually paid to the acting counsel on record and



thus paid to the Claimant's counsel on the record. The Respondent averred that Judgment sum was paid to the claimant direct less statutory deductions.

52. The Respondent submitted that the Claimant/Applicant has a personal vendetta against Mr. Ashish Shah for reasons personally known to himself, hence the numerous frivolous applications. The Respondent also submitted that the previous judicial officer handling this claim and who awarded him judgment and whom he claimed had been compromised, applicant would have applied for the said judge to rescue himself as opposed to bringing the current allegations. The Respondent submitted that the Claimant/Applicant had the option to appeal against the decision of the judge instead of filing numerous frivolous applications.
53. The Respondent submitted that there is no evidence that it was involved in the Claimant/Applicant's failure to comply with statutory regulations and that it is not responsible for paying the Claimant/Applicant's taxes since he is no longer their employee.
54. In conclusion, the Respondent urges this Honourable Court to find that the two applications lack merit and, therefore, should be dismissed.

### **Analysis and determination**

55. The court has considered the two applications, replying affidavits as well as the submissions by both parties on record, the issues of determination are as follows:
  - i. Whether the application dated 26<sup>th</sup> June 2024 has been overtaken by events
  - ii. Whether the application dated 6<sup>th</sup> May 2024 is res judicata or are there grounds to have the same reviewed.
56. The prayers in the Notice of motion dated 6<sup>th</sup> May 2024 as hereinabove cited are seeking review of the Ruling granted on 14<sup>th</sup> March 2023 by Hon. Justice Nderitu. The impugned order as in the following terms –
  - a. “That an order for say of execution is hereby issued prohibiting any attachment of the properties of the Respondent and
  - b. That the decree herein has been satisfied and there is no lawful reason for any attachment to issue.”
57. The court made a determination on 16<sup>th</sup> November 2023 whereby it held that the Notice of motion by the Claimant dated 27<sup>th</sup> March 2023 was to be struck with no orders as to costs.  
Hence the current application for review of the said court Ruling.
58. The law that provide for consideration of review of courts judgment is set out on rule 74(1) (a – d) of the Employment and Labour Relations Court Procedure Rules (2024) which states as follows –
  - (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
    - (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
    - (b) on account of some mistake or error apparent on the face of the record;



- (c) if the judgment or ruling requires clarification; or
- (d) for any other sufficient reason.

59. The issues raised by the applicant in his pleadings and submissions touches on the complaint that the Learned Judge granted the above orders for stay of execution.

Yet he was not aware of the same as he had not been served. He says he filed another application for review dated 17<sup>th</sup> January 2024 and the same was not heard.

The court was advised the same was dismissed as the claimant did not turn up.

60. The court finds no new grounds to support the application for review of the orders granted on 14<sup>th</sup> March 2023.

61. The court can mention even though that was not the gist of the application that the applicant contention is that the Respondent did not produce the decree as proof of settlement of the decretal sum. He also avers that the respondent should not have deducted the statutory. The judgment delivered by Justice D. Nderitu however provided the amount awarded was less the statutory. Also Section 49(2) of the [Employment Act](#) provide that awards are subject to the statutory.

The applicant also alleges he could have applied for waivers from Kenya Revenue Authority. The court would not pursue that claim as each person is responsible for his tax obligations and the Claimant was no longer an employee of the Respondent.

62. The Ruling delivered on 16<sup>th</sup> November 2023 determined and concluded the application of 14<sup>th</sup> March 2023.

Finding no grounds to justify the review of the courts orders and finding the Honourable court struck out the applicant's motion the safer way for the applicant was to file an appeal instead of filing numerous applications in the same court thus, making the matter functus officio as the High Court has discharged its mandate.

63. In Section 7 of the [Civil Procedure Act](#) provides as follow-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

64. In *John Florence Maritime Services Limited & Another V Cabinet Secretary for Transport and Infrastructure & 3 Others* [2021] eKLR where, the court held that “res judicata is a legal doctrine that prevents subsequent proceedings on the same issue once it has been conclusively decided by a competent court in a prior suit between the same parties or their representatives. It is based on public interest to end litigation and protect parties from repetitive litigation over the same matter. The doctrine ensures efficient use of court resources, timely case resolution, stability in judgments, and reduces inconsistencies. It also promotes confidence in the judicial system and predictability, which is essential for justice and the rule of law. Without res-judicata, the rule of law would be at risk of unravelling.”



65. In Kenya Commercial Bank Limited & another V Muiri Coffee Estate Limited & 3 Others [2016] KESC 6 (KLR), the Supreme Court stated as follows:

“The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

66. The court finds and holds that the applicant’s motion dated 6<sup>th</sup> May 2024 has not been proved and is dismissed accordingly.

67. The Notice of motion dated 26<sup>th</sup> June 2024 the applicant prayed that inter alia: -

“---- Honourable Justice D. Nderitu recuses himself to pave way for investigations into the circumstances on how the orders on the application dated 3<sup>rd</sup> March 2023 were issued without the respondent filing a decree in court.”

68. The applicant has raised serious allegations against Justice D. Nderitu and calls for investigations against the Judge, lawyer Mong’eri and defendant and cites corruption.

69. The applicant in his pleadings has also said that he is aware the Judge has been transferred to Kakamega court.

70. This court is not in a position to determine this application as it relates to another Judge. The applicant can decide to have the same transferred to the court of the named Judge should he choose to proceed with the application.

The court will say no more on this application for obvious reasons.

71. The court finds no merits however to the application seeking review of the application dated 6<sup>th</sup> May 2024 and is dismissed.

Each party will meet their costs of these applications.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 6<sup>TH</sup> DAY OF MARCH, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the



right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

