



**Ososo v University of Nairobi (Cause E720 of 2021)  
[2025] KEELRC 1213 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1213 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E720 OF 2021  
CN BAARI, J  
APRIL 30, 2025**

**BETWEEN**

**RONALD WANDERA OSOSO ..... CLAIMANT**

**AND**

**UNIVERSITY OF NAIROBI ..... RESPONDENT**

**RULING**

1. For determination is the Respondent's Notice of Motion application dated 26<sup>th</sup> June 2024, brought pursuant to Sections IA, 3A and 3B of the Civil Procedure Act and Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016, seeking orders that: -
  - i. This Honourable Court be pleased to review and/or vary the Order No. (a) (ii) issued on 29<sup>th</sup> February 2024 to provide that "the balance of Kshs.2,130,000/= to be deposited in a Judiciary Account pending the hearing and determination of Civil Appeal No. E687 of 2023 or any agreement between the parties"
  - ii. The firm of Mohammed Muigai LLP be ordered to deposit the sum of Kshs.2,130,000/= which was sent to the said law firm by the Respondent in the Judiciary Account within seven (7) days of issuance of Order (a) sought hereinabove and a copy of the deposit slip thereof be availed to the Respondent.
  - iii. Costs of the application be provided for.
2. The Motion is supported by grounds on the face thereof, and the affidavit of Bernard David Njuguna, the Ag. Registrar of the Respondent sworn on 26<sup>th</sup> June, 2024. The crux of the Motion is that by a ruling delivered on 29<sup>th</sup> February 2024, this Court (differently constituted) issued an order of stay of execution of the judgment and Decree in this cause on various conditions, one of the conditions being that the balance of Kshs. 2,130,000/= to be deposited in joint interest earning bank account in the name of the Parties' Advocates.



3. The Applicant avers that the Respondent herein, is represented in this cause by their Director of Legal & Corporate Board Services, and not a law firm, and that opening a bank account as directed by the Court in Order (a) (ii) would entail that the bank account be opened in the name of the Respondent's Director of Legal & Corporate Board Services in his individual capacity as an Advocate of the High Court of Kenya which would portend difficulties since the Respondent is a public entity.
4. The Applicant further states that contrary to the terms of the Order, the entire sum of Kshs.2,130,000/= was transferred to the firm of Mohammed Muigai LLP by the Respondent, when the Order issued by the Court was to the effect that the sum of Kshs.2,130,000/= be deposited in "joint interest earning bank account in the names of the Parties' Advocates ", hence the said Order has not been complied with as the funds are currently held by the firm of Mohammed Muigai LLP.
5. The Applicant states that the said firm is yet to avail to the Respondent details of the bank account where the said sum of Kshs. 2,130,000 /= was deposited. It avers further that the Claimant has since filed a Notice of Change of Advocates, where the firm of "Aluvale & Co. Advocates" is on record in place of "Mohammed Muigai LLP. In view of which, it is necessary that the Order issued on 29<sup>th</sup> June 2024, be varied to provide that the said sum be deposited in a Judiciary Account.
6. The Claimant opposed the motion vide a replying affidavit sworn on 24<sup>th</sup> September, 2024. The Claimant avers that immediately the Respondent was granted a stay of execution, parties-initiated correspondences to comply with the court orders, where the Respondent wrote to the Claimant's counsel asking for information on the opening of the joint bank account, and that the Claimant's counsel asked to be made aware of the signatories of the account on behalf of the Respondent.
7. That instead of availing the information to facilitate the opening of the joint account, the Respondent unilaterally transferred the entire decretal sum to the advocates then acting for the Claimant, being the sum of Kshs. 3, 130,000/-.
8. The Claimant states that immediately his advocates received the money, it immediately, and in good faith appropriated the money in accordance with the order of the court and further made an undertaking not to execute the decree.
9. The Claimant avers that more than a month after transferring the money, the Respondent wrote to his former advocates indicating that the entire sum was transferred to them in error/mistake, and subsequently, lodged the instant motion seeking to have the amount of Kshs. 2,130,000 deposited in a judiciary account.
10. The Claimant states that the Respondent ought to have made its application for variation of the court orders, immediately the orders were granted.
11. Parties canvassed the motion by way of written submissions, which have been duly considered.

### **Determination**

12. I have considered the application, the grounds and affidavit in support thereof, the replying affidavit in opposition and the submissions by both parties. The issue that arise for determination is whether the Respondent merits grant of review orders.
13. Section 16 of the *Employment and Labour Relations Court Act* and Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016, empowers this court to review its judgements, awards, orders or decrees.



14. Rule 33 (1) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 states:
- “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.”
15. The Applicant’s prayer in the instant motion, is for variation of the order of 29<sup>th</sup> June, 2024 to provide that the sum transferred to the Claimant’s erstwhile advocates, be deposited in a Judiciary Account.
16. The application is premised on the assertion that the Respondent is represented in this cause by their Director of Legal & Corporate Board Services, and not a law firm, and that opening a bank account as directed by the Court in the Order, would mean that the bank account be opened in the name of the Respondent’s Director of Legal & Corporate Board Services in his individual capacity as an Advocate of the High Court of Kenya, which situation would portend difficulties since the Respondent is a public entity.
17. The Applicant states that contrary to the terms of the Order, the entire sum of Kshs.2,130,000/= was transferred to the firm of Mohammed Muigai LLP by the Respondent, when the Order issued by the Court was to the effect that the sum of Kshs.2,130,000/= be deposited in "joint interest earning bank account in the name of the Parties' Advocates".
18. The Applicant further contends that the firm of Mohammed Muigai LLP is yet to avail to the Respondent details of the bank account where the money was deposited, and which position is further convoluted by the fact that the Claimant has since filed a Notice of Change of Advocates, where the firm of "Aluvale & Co. Advocates" is on record in place of "Mohammed Muigai LLP.
19. Although the Claimant in his opposition to this motion contends that his erstwhile advocates made an undertaking not to execute the decree herein, no such undertaking has been placed before this court.
20. The Court further notes the change of advocates that the Claimant has effected, leaves not only the court, but also the Respondent unaware of which of the two law firms now holds the funds.
21. It is also apparent that the court order expressly stated that the balance of Kshs.2,130,000/= be deposited in "joint interest earning bank account in the name of the Parties' Advocates ". The undertaking referred to by the Claimant, cannot in any way be considered to comply with the express order of the court.
22. In conclusion, noting the Respondent’s difficulty in complying with the order as drawn, and further considering that the money was transferred and continues to be held contrary to the order of the court, I find and hold that sufficient cause has been demonstrated to allow variation of the order to enable compliance.
23. In the end, the order of 29<sup>th</sup> February, 2024 in this matter is hereby varied in the following terms: -



- a. That the balance of Kshs.2,130,000/= be deposited in a Judiciary Account pending the hearing and determination of Civil Appeal No. E687 of 2023 or any agreement between the parties.
- b. That the firm of Mohammed Muigai LLP be and is hereby ordered to deposit the sum of Kshs. 2,130,000/= in the Judiciary Account within 21 days of this Order and a copy of the deposit slip thereof, availed to the Respondent.
- c. Parties shall bear their own costs of the application.

24. Orders accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2025**

**C. N. BAARI**

**JUDGE**

Appearance:-

Ms. Matara h/b for Ms. Wanjiru Ngige for the Claimant

Ms. Nyaga present for the Respondent

Ms. Esther S - Court Assistant

