



**Kinuthia v Barefoot Power Africa Limited (Cause 1187 of 2018)  
[2025] KEELRC 1093 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1093 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1187 OF 2018  
CN BAARI, J  
APRIL 4, 2025**

**BETWEEN**

**JOEL NDURUHU KINUTHIA ..... CLAIMANT**

**AND**

**BAREFOOT POWER AFRICA LIMITED ..... RESPONDENT**

**RULING**

1. This ruling relates to notice of motion application dated 24<sup>th</sup> October, 2024, brought pursuant to Sections 1A & 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the [Civil Procedure Rules](#). The Applicant seeks orders:-
  - i. That Stanbic Bank Limited be directed to release the monies in the Respondent's account held at the Kenyatta Avenue Branch Dollar Account number [particulars withheld], Kenya Shillings account number No. [particulars withheld], and Euro account number No. [particulars withheld] to the extent of the sum of Kshs. 1,689,930.80/- to the Applicant.
  - ii. That the costs of the application be provided for.
2. The application is supported by grounds on the face and the supporting affidavit of the Applicant sworn on 24<sup>th</sup> October, 2024. The crux of the motion is that this Court (Hon. Justice Rika) delivered a judgment on 12<sup>th</sup> February, 2024 in this matter awarding the Claimant a sum of Kshs. 1,489,930.80 together with interest and costs from the date of filing of the claim.
3. The Applicant further avers that on 3<sup>rd</sup> May, 2024, he filed his Party and Party bill of costs which was taxed at Kshs. 292,794/- in a ruling delivered on 26<sup>th</sup> August, 2024, following which a certificate of costs was issued.



4. The Applicant states that he made a demand for payment of the sum due to him from the Respondent, being a total sum of KShs.2,808,311.68 as at the time of demand, which demand the Respondent has not met.
5. It states that in a ruling rendered earlier by Hon. Justice Byram Ongaya, on 12<sup>th</sup> July, 2019, attaching the monies in the Respondent's account held at the Kenyatta Avenue Branch of CFC Stanbic Bank Limited Dollar account number [particulars withheld], Kenya Shillings account number No. [particulars withheld], and Euro account number No. [particulars withheld] to the extent of the sum of Kshs. 1,689,930.80/-.
6. That the Applicant now seeks the amount attached to be released to him in partial fulfilment of the decree of this Court, and that he reserves his right to execute for the balance.
7. The Applicant finally argues that unless the order sought is granted, he continues to suffer loss and prejudice.
8. The Respondent opposed the application through grounds of opposition dated 29<sup>th</sup> November, 2024, where it argues that the party against whom the order is sought is not a party to this matter.
9. The Respondent further argues that the Applicant has not obtained a decree and the subject being execution of proceedings, the Applicant cannot rely on Order 51 Rule 1, hence the motion is materially defective and bad in law.
10. It is the Respondent's position that the Civil Procedure Rules provide for the appropriate mode of execution that the Applicant should follow under Order 22 and 23, and which the Applicant ought to adhere to.
11. The Respondent prays that the motion be dismissed.

#### **Determination**

12. I have carefully considered the motion, the grounds in support and the those in opposition. The issue for determination is whether the Claimant/Applicant can execute in the manner it seeks to.
13. The Applicant has brought the application under Order 51 Rule 1 of the Civil Procedure Rules which provision does not relate to execution proceedings, but rather the manner of filing such proceedings.
14. The basis of the motion herein, is the order by Hon. Justice Ongaya of 12<sup>th</sup> July, 2019, attaching the monies held in the Respondent's account. The Court however notes that the Applicant has not extracted the decree in the matter, and neither has the certificate of costs been adopted as an order of the court for purposes of execution.
15. The fact that money belonging to the judgment debtor is held in a bank account by order of the court, does not mean that the judgment creditor is not bound by the laws on execution of decrees. To the contrary, the Applicant must adhere to the provisions of Order 22 and 23 of the Civil Procedure Rules on execution of decrees.
16. For the reasons foregone, I find the motion materially defective and is hereby dismissed.
17. I make no orders as to costs.
18. Orders accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF APRIL, 2025**

**C. N. BAARI**



**JUDGE**

Appearance:

Mr. Oyoo Present for the Applicant/Claimant

Ms. Mugo Present for the Respondent

Ms. Esther S - CA

