



**Ngolo v Western Seed Co Ltd (Cause E008 of 2023)
[2025] KEELRC 1607 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1607 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E008 OF 2023
MA ONYANGO, J
MAY 23, 2025**

BETWEEN

PHILIP A NGOLO CLAIMANT

AND

WESTERN SEED CO LTD RESPONDENT

RULING

1. Judgement in this suit was delivered on 28th September, 2023 in favour of the Claimant. Thereafter the Claimant filed a Bill of Costs which was taxed and a ruling in respect thereof delivered by the Deputy Registrar/Taxing Master on 8th March, 2024.
2. Vide an application dated 3rd April, 2024 the Respondent sought stay of execution of the Judgment and decree on grounds that it intended to file an appeal.
3. When the application for stay of execution was made by the Respondent the court granted orders of temporary stay of execution ex-parte conditional upon the deposit of the decretal sum in court which the Respondent did.
4. By a ruling delivered on 28th November, 2024 the court dismissed the application for stay of execution on grounds that there was no evidence of any intention to file appeal as the time for filing appeal had lapsed, no request had been made for typed proceedings and there was no evidence that the court file had been missing as alleged by the Respondent.
5. Before me now is an application by the Claimant/Decree Holder dated 10th January, 2025 as amended on 10th February, 2025 in which the Claimant/Decree Holder seeks the following orders:
 - a. The application herein be certified urgent and heard on priority basis.



- b. The sum of Ksh.858,860/= deposited in court under Reference Number E3EBQVM6 by the firm of Teti & Co. Advocates on 13/4/2024 be and is hereby released to the firm of M.A. Ingutia & Co. Advocates on record for the Claimant.
 - c. The balance e and is hereby released to the firm of M.A. Ingutia & Co. Advocates.
 - d. Costs of this application be provided for.
6. The grounds in support of the application as set out on the face thereof are that:
- a. Judgment was entered by this Honourable court in favour of the Applicant/Clamant herein as against the Respondent at Ksh.419,834/= together with other benefits and interests that summed up to Ksh.858,860/=.
 - b. The Respondent then filed an application dated 3rd April, 2024 seeking among other prayers, stay of execution of the judgment.
 - c. The application was, in the interim, allowed on the condition that the Respondent deposits the decretal sum in court.
 - d. The Respondent, through the firm of Teti & Co. Advocates deposited the said sums in court on the 13th of April 2024 under Reference No. E3EBQVM6 for a sum of Ksh.858,860/=.
 - e. The application has since been dismissed paving way for the release of the decretal sums that had between deposited in court.
 - f. No one shall be prejudiced if the orders sought herein are granted.
 - g. Unless the orders sought are granted, the Applicant stands to suffer irreparable loss owing to the enormous amount kept unutilized at the bank.
7. The application is supported by the Amended Affidavit of Margaret Ingutia Atema, counsel for the Claimant, in which she reiterates the grounds on the face of the application.
8. The application is opposed. The Respondent filed a replying affidavit of Doreen Namaemba, the Respondent's Human Resource Officer in which she deposes that the application is premature, misconceived and an abuse of court process as an application for leave to appeal is pending before the Court of Appeal in Eldoret Civil Appeal Application No. E010 of 2025. That until that application is disposed of this court does not have jurisdiction to entertain the current application.
9. It is further deposed that should the pending appeal succeed the Applicant herein will not be in a financial position to refund the decretal sum, which is substantial. That to safeguard the interests of both parties the money should be retained in the court for the benefit of the successful party in the appeal. That if the money is released to the Applicant and the appeal is successful the same would be rendered nugatory.
10. Prayer 1a in the Amended application before the court is for leave to be granted to the firm of M.A. INGUTIA & COMPANY ADVOCATES to come on record for the Applicant.
11. In view of the nature of the application, I directed that the same be disposed of in summary form without the need for parties to file submissions.
12. Order 9 rule 9 of the Civil Procedure Rules provides for change of advocates after judgment as follows:

[Order 9, rule 9.] Change to be effected by order of court or consent of parties.



9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
13. I note that there is a consent dated 19th December, 2024 between the firm of M/S J.K. Kaptich & Associates Advocates and M.A. Ingutia & Co. Advocates for the change of counsel after judgment.
14. I therefore hereby grant leave to the firm of M.A. Ingutia & Co. Advocates to come on record for the Applicant herein.
15. I have considered the rest of the prayers in the application and the grounds and affidavit in support thereof. I have further considered the replying affidavit.
16. The Respondent's main ground of opposition to the application is that it has filed an application for leave to appeal which is pending before the Court of Appeal. That before the application is disposed of this court lacks jurisdiction to entertain the current application. The Respondent however did not attach a copy of the said application filed at the Court of Appeal. It is further evident from the documents filed by the Respondent that there are no orders of stay of execution by the Court of Appeal.
17. It is not clear what provisions of the law the Respondent relies on when it states that this court has no jurisdiction to entertain the application herein until the application before the court of Appeal is disposed of. As far as I am aware, only this court can grant the orders sought in the instant application and the only instances in which this court would be unable to grant the orders would be if there are orders of stay of proceedings or stay of execution by the Court of Appeal.
18. As I have set out above, an application for stay of execution filed by the Respondent in this court was rejected on grounds that there was no demonstration of intention to appeal. It would have been helpful if the Respondent availed a copy of its application to this court or even stated the grounds upon which it relies in the said application in the replying affidavit to assist this court in coming to a decision that encompasses all relevant issues.
19. It is further instructive that the application by the Respondent can only be for leave to file appeal out of time. As of now, there is no appeal.
20. In the absence of knowledge of the prayers pending before the Court of Appeal and being cognizant of the history of this case, this court is left without the grounds upon which it would deny the Applicant the enjoyment of his rightfully earned decree.
21. The decree herein is a money decree and the release of the funds deposited in court would not render nugatory the intended appeal, if leave is granted by the Court of Appeal and if the appeal is successful.
22. For the foregoing reasons, I grant prayer 2 of the Amended Notice of Motion dated 10th February, 2025 with no order as to costs.



23. Accordingly, authority is hereby granted for the sum of Kshs. 858,860 deposited in court on 13th April, 2024 under Reference No. E3EBQVM6 by Teti & Co. Advocates to be released to M.A. Ingutia & Company Advocates on record for the Claimant.
24. There shall be no orders for costs of this application.

DATED, DELIVERED AND SIGNED AT KITALE THIS 23RD DAY OF MAY 2025

M. ONYANGO

JUDGE

