



**Kenya Concrete, Structural, Ceramic Tiles, Woodplys and Interior Design  
Worke v Intex Construction Limited; Kenya Building Construction Timber &  
Furniture Employees Union (Interested Party) (Employment and Labour Relations  
Cause E559 of 2020) [2025] KEELRC 1480 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1480 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E559 OF 2020**

**HS WASILWA, J**

**MAY 20, 2025**

**BETWEEN**

**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOODPLYS ANRS  
INIOND INTERIOR DESIGN WORKERS UNION ..... CLAIMANT**

**AND**

**INTEX CONSTRUCTION LIMITED ..... RESPONDENT**

**AND**

**KENYA BUILDING CONSTRUCTION TIMBER & FURNITURE EMPLOYEES  
UNION ..... INTERESTED PARTY**

**RULING**

1. The Applicant filed a Notice of Motion dated 7<sup>th</sup> March 2025 seeking orders that: -
  1. Spent
  2. Spent
  3. this Honourable Court be pleased to grant interim orders of stay of execution of the judgment delivered on the 3<sup>rd</sup> day of December 2024 by Hon. Lady Justice Anna Ngibuini Mwaure pending the hearing of this application.
  4. The execution of the judgment delivered on the 3<sup>rd</sup> day of December 2024 by Hon. Lady Justice Anna Ngibuini Mwaure and any resultant decree therefrom as well as all consequential orders and/or proceedings arising from the said decree, de stayed pending the filing, hearing and determination of the Applicant’s intended Appeal.



5. The costs of and occasioned by this Application be costs in the intended appeal.

### **Respondent/Applicant's Case**

2. The Applicant avers that being aggrieved by the judgment delivered on the 3<sup>rd</sup> December 2024 by Hon. Lady Justice Anna Ngibuini Mwaure in favour of the Claimant, it timeously filed a Notice of Appeal and requested types and certified copies the proceedings and judgment to enable it file an appeal. The certified copies of the proceedings and judgment are yet to be availed to it at the time of filing this application.
3. The Applicant avers that it has since complied with the orders issued in the judgment by making payment of the outstanding union dues from the months of November 2023 to August 2024 in the sum of Kshs. 4,240,000 and therefore there are no outstanding and/or unremitted union dues to be paid by it.
4. The Applicant avers that the purported employees on whose behalf the Claimant filed this suit demanding union dues, were all released from the Respondent's employment on account of redundancy, therefore, there is no unremitted union dues to be paid on their behalf.
5. It is the Applicant's case that there is imminent threat of execution of the judgment by the Claimant who by a letter dated 17<sup>th</sup> February 2025 demanded payment of an alleged outstanding sum of Kshs. 1,035,000 and enclosed an application for execution of decree without sharing the decree from the execution proceeding.
6. The Applicant avers that he has an arguable appeal with high chances of success and the application has been filed without unreasonable delay noting the judgment was delivered on 3<sup>rd</sup> December 2024.
7. The Applicant avers that unless an order of stay of execution is granted, the intended appeal will be rendered nugatory as the Claimant has already set in motion the execution process of the decree arising from the judgment defeating the purpose and object of the Appeal.

### **Claimant/Respondent's Case**

8. In response to the Application, the Claimant/Applicant filed a replying affidavit dated 26<sup>th</sup> March 2025 sworn by Dishon Angoya, the General Secretary of the Claimant Union.
9. The Claimant/Respondent avers that it moved this court by way of Memorandum of Claim dated 21<sup>st</sup> September 2020 which was determined by a judgment delivered on 3<sup>rd</sup> December 2024 in its favour. Upon delivery of the judgment, the Claimant union extracted a decree dated 14<sup>th</sup> February 2025 and is in the process of executing the same as required under the law.
10. The Claimant/Respondent avers that if the stay of execution sought by the Applicant is granted, it will amount to suspension of some sections of the law.
11. The Claimant/Respondent avers that the Respondent agreed to pay all unremitted union dues and as per the letter dated 24<sup>th</sup> February 2025, it has paid for 9 months and has an outstanding balance of Kshs. 1,035,000 which he refused to pay as of December 2024 for 15 months; prompting the union to request the Court for adoption in figures for the purposes of execution.
12. The Claimant/Respondent avers that the sought stay orders to stop deducting trade union from the Claimant's members and remitting the deducted amounts to the specified bank account of the Claimant will amount to halting and/or suspending the effects of Section 48 of the [Labour Relations Act](#).



13. It is the Claimant/Respondent's case that orders for stay of execution if granted the employees right of being members of a trade union will be severely breached since the union dues the Respondent is seeking to stop deducting and remitting to the union are meant for maintain the membership of employees.
14. The Claimant/Respondent avers that the orders 2 and 3 of the judgment are meant to protect the employees' rights and if the Court grants the orders sought, the intended protection of the members of the Claimant will be taken away hence leaving them exposed to harassment and victimization by the Respondent.
15. The Claimant/Respondent avers that failure of the Respondent to comply with the provision of Section 48 of the *Labour Relations Act* was at its fault hence the penalty meted on them by the Court. The Respondent in the application herein indicated that they paid union dues up to August 2024 and they have not explained to the Court why they should not pay the accrues union dues thereafter as directed.
16. The Claimant/Respondent avers that the Respondent started paying the accrued union dues only after the Applicant's director Vikas Gehlot has been cited for contempt for disobeying court orders in this suit issued on 6<sup>th</sup> October 2020 and was consequently fined Kshs. 50,000. Therefore, this application is a scheme to fail to deduct and remit union dues to the Claimant and victimize the employees by virtue of their membership.
17. It is the Claimant/Respondent case that the claimed amount is for unremitted union dues and the same will be keep increasing for as long as the Respondent failed to remit for subsequent months and this is not an issue to determined in the Appeal. The law provides that union dues is deducted and remitted to the union on monthly basis hence failure by the Respondent to remit the same for any subsequent period will cause an increase of the dues.

### **Applicant's Submissions**

18. The Applicant submitted that this court ought to be guided by the provisions of Order 42 Rule 6(1) and (2) of the Civil Procedure Rules that states:
  - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) No order for stay of execution shall be made under subrule (1) unless—
    - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and



(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

19. It is the Applicant’s submission that the application was made without unreasonable delay; this application was filed on 7<sup>th</sup> March 2025 barely 2 months after delivery of the judgment on 3<sup>rd</sup> December 2024.
20. The Applicant submitted that it is apprehensive that should the Court not grant stay of execution as prayed, it is likely that the Applicant would be unable to recover the decretal sum from the Claimant should its intended appeal succeed. Further, the decretal amount may balloon to an unsustainable figure noting the Claimant keeps increasing the decretal amount; and the Respondent has no knowledge of the union’s financial ability to repay the awarded sum should the appeal succeed.
21. It is the Applicant’s submission that the judgment sum keeps changing and increasing based on the Claimant’s calculations and if the same is paid out and the intended appeal succeeds, the Respondent is apprehensive it will be unable to recover the money from the Claimant causing it substantial loss.
22. The Applicant submitted that the intended appeal is an arguable one as it will be urging the Court of Appeal to find that the learned judge erred in law and in fact and contradicted herself by holding that the receipts of remittance of union dues were not verifiable since they did not contain any details of members on whose behalf the payments were being made and on the other hand, making a finding that the Interested Party did indeed avail documentation before the Conciliator showing remittance of union dues to it on behalf of its members. The Applicant will further argue that the learned trial judge erred in law and in fact in failing to address herself adequately to the issue raised by the Respondent in its written submissions whereby the employer finding itself in a position where it is forced to remit union dues to 2 trade union and therefore the decision of the Court ought to be tested on appeal.
23. The Applicant submitted that this Court has wide and unfettered discretion on whether to order security and the essence of provision of security was set in *Amoke Otieno Pascal v Melvin Anyango Owuor* [2022] KEHC 687 (KLR). With reference to this decision, the Respondent/Applicant is ready and willing to abide by the terms this Court imposes in terms of security for the grant of execution sought.

#### **Claimant/Respondent’s Submissions**

24. The Claimant/Respondent submitted that if the stay of execution sought by the Applicant is granted, it will amount to suspension of some sections of the law.
25. The Claimant/Respondent submitted that vide the judgment dated 3<sup>rd</sup> December 2024, the Court ordered that the Respondent to continue deducting union dues from the salaries of the members of the Claimant union and remit the same to a bank account specified by the Claimant. The union dues under the cited order is monies exclusively deducted from the Claimant’s members and not from their kitty hence if the appeal succeeds, the Applicant will not suffer any loss.
26. The Claimant/Respondent submitted that by granting stay orders to the Applicant to deduct union dues from its members and remitting the deducted amounts to the Claimant’s specified bank account will amount to halting and/suspending the effect of Section 48 of the *Labour Relations Act*.
27. It is the Claimant union’s submission that trade union dues being its source of income meant to maintain the membership of respective employees in the union for the purpose of representation and their participation in the union activities hence the grant of stay orders will amount to suspension of



- membership of the affected employees since they will cease to be paid up members of the union as envisaged under Section 4 (2) of the *Labour Relations Act*.
28. The Claimant union submitted that membership to a trade union is a fundamental right and freedom of every employee pursuant to the provisions of Article 42 (2) (c) of *the Constitution* and Section 4 of the *Labour Relations Act* which cannot be unreasonable denied to its members.
  29. The Claimant/Respondent submitted that assuming the appeal succeeds, the Court will not allow the Applicant to interfere with the membership of the Claimant and the deduction of union dues except as provided by law. Further, the law will only allow stoppage of union dues in the event the employees resign from the union as provided under Section 48 (6) of the *Labour Relations Act*.
  30. It is the Claimant/Respondent's submission that the claimed amount accrued from unremitted union dues from the month of September 2024 and subsequent months the Respondent/Applicant failed to the remit. If the Respondent disputes the amount claimed, they can approach this Court for determination and cannot imply the issue can only be determined by an appeal.
  31. The Claimant/Respondent submitted that the Respondent/Applicant is at liberty to invoke Section 50 of the *Labour Relations Act* to recover any amount that might be due for refund in the event the appeal succeeds. Section 50 provided an employer may set off against any sum payable to a trade union the amount of any money paid by the employer into the account of the union designated by the Minister.
  32. I have examined all the accounts and submissions of the parties herein. It is true that the Applicants have filed a Notice of Appeal in this matter and hence technically intending to proceed on appeal of this court's order.
  33. In view of this fact and in order to preserve the substratum of the appeal, I would allow stay of execution on condition that the Applicant deposits entire decretal sum in court within 30 days in default execution may proceed. Costs in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

