



REPUBLIC OF KENYA



KENYA LAW
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**Kowido v Speed Capital Limited (Cause 2460 of 2016)
[2025] KEELRC 1417 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1417 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2460 OF 2016
NJ ABUODHA, J
MAY 16, 2025**

BETWEEN

BERTHA AWUOR KOWIDO CLAIMANT

AND

SPEED CAPITAL LIMITED RESPONDENT

RULING

1. By a Motion dated 18th December, 2024 the applicant seeks from this Court orders among others that there be a stay of execution of the orders issued by the Court on 28th November, 2024 and consequential orders. The applicant further sought an order that the Registrar of the Court calculates the proper interest payable in the matter and allow the respondent to settle.
2. One of the grounds upon which the applicant seeks the orders of the Court to be set aside is stated by the applicant to be that the orders were made in absence of Counsel for the applicant because they were not aware that the matter was coming up having mis-diarized the date. The applicant laments that the decree-holder has instructed auctioneers to execute against the respondent's directors and the respondent's chief operating officer to recover the sum of Kshs. 653, 125/- .
3. Whereas the Court appreciates that a party ought to be heard and cannot be punished for the fault of the advocate, this matter has a history which does not seem to favour the applicant. To start, the judgment in this matter was delivered on 25th October, 2019. The respondent never appealed the judgment. Attempts to execute that judgment have not been successful prompting the filing of an application dated 13th October, 2022 seeking the examination of the directors of the respondent on how to settle the decretal sum. This application was allowed by Judge Mbaru on 16th February, 2023. When the matter was placed before me on 17th April, 2023, Mr. Kirimi for the judgment debtor informed the Court that the directors were doing their best to raise funds. However the Court directed that as per the ruling by Judge Mbaru, the named directors appear before the Court on 12th June, 2023 for purposes of cross-examination. The Court however suggested to the parties that they



resume settlement negotiations. After several adjournments for reasons noted in the file, the parties finally appeared before me on 24th October, 2024 however the matter could not proceed because both Counsel were not ready and the named directors were not before the Court. The matter was therefore scheduled for hearing on 28th November, 2024, the subject of the present application.

4. When the matter was called, only counsel for the decree holder was present and the date having been taken in the presence of both parties, the Court granted the orders sought that is to say, the Court ordered the named directors personally liable for the debts of the respondent and that execution do issue against them personally. It is important to note that in making this order, the Court merely echoed the orders of Mbaru J in her ruling delivered on 16th February, 2023 where the learned Judge stated among others that the named directors attend Court for cross-examination and in default they be held personally liable for the decretal sum.
5. The respondent never appealed this ruling and have never appeared before this court for cross-examination. The applicant has stated that they would like the Registrar of the Court to compute the proper interest on decretal sum to allow the respondent settle the same. It is noteworthy that the applicant herein has not challenged the legality of the order of the Court herein. It merely wants the same set aside because it was issued ex parte. On the other hand seeks that the Registrar of the Court computes the correct interest for payment of the same.
6. Considering when the judgment herein was delivered and the fact that no appeal was preferred against it by the respondent and further considering that the execution has been a problem necessitating applications to hold the directors personally liable, no purpose will be served by setting aside the order of the Court made on 28th November, 2024 simply because it was made in absence of counsel because he mis-diarized the date. The orders were inevitable eventuality going by the ruling of the Court (Mbaru J) delivered on 16th February, 2023.
7. In the circumstances the Court will not set aside the orders of 28th November, 2024 but will allow prayer 6 of the Motion and direct that the parties herein liaise with Deputy Registrar of the Court and compute the interest on the decretal sum for purposes of payment of the amount due as prayed by the applicant.
8. The matter is therefore scheduled for mention on 30th June, 2025 for purposes of compliance and further directions.
9. For avoidance of doubt, no execution to proceed in the interim.
10. It is so ordered.

DATED AT NAIROBI THIS 16TH DAY OF MAY, 2025

DELIVERED VIRTUALLY THIS 16TH DAY OF MAY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

