



Kenya Power & Lighting Company v Mukala & another (Miscellaneous Application E341 of 2024) [2025] KEELRC 1275 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1275 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E341 OF 2024**

HS WASILWA, J

MAY 6, 2025

BETWEEN

KENYA POWER & LIGHTING COMPANY APPLICANT

AND

ALEXANDER KASINA MUKALA 1ST RESPONDENT

INTERFIELD AUCTIONEERS 2ND RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 27th November 2024 seeking orders that: -
 1. Spent
 2. this Honourable Court be pleased to declare and find that the 1st Respondent herein is in contempt of the court's order delivered on 20th February 2019 (hereinafter referred to as 'the order') by Hon. Lady Justice Wasilwa in ELRC No. 301: Alexander Kasina Mukala vs Kenya Power & Lighting Company Limited.
 3. this Honourable Court issues a notice to the 1st Respondent to appear before this court and show cause why he should not be cited and punished for contempt of the order of this court delivered on 20th February 2019.
 4. this Honourable Court commits the 1st Respondent to civil jail for 6 months or for such other a period that the court deems just in the circumstances or until the contempt of court is purged in full.
 5. this Honourable Court moves swiftly to assert its authority and vindicate the dignity of this Court enforcing strict obedience of the order of this Honourable Court delivered on 20th February 2019 in Nairobi ELRC No. 301 of 2012.



6. this Honourable Court be pleased to grant such further orders as may be just and expedient.
7. the costs of this Application be borne by the Respondent in any event.

Applicant's Case

2. The Applicant avers that this court delivered judgment in ELRC No. 301: *Alexander Kasina Mukala v Kenya Power & Lighting Company Limited* on 9th October 2018 in favour of the Respondent awarding a decretal sum of Kshs. 637,312 as compensation for unfair termination together with costs and interest.
3. The Applicant avers that being dissatisfied with the judgment, it lodged an appeal vide Notice of Appeal dated 22nd October 2018 setting in motion COACA E203 of 2022: *Kenya Power & Lighting Company Limited v Alexander Kasina Mukala*.
4. The Applicant further filed an application for stay of execution pending hearing and determination of the intended appeal dated 23rd October 2018; which orders was granted vide a ruling of 20th February 2019 on condition that the Applicant deposits the decretal sum in court within 30 days.
5. The Applicant avers that it deposited the decretal sum vide a direct deposit application form dated 7th March 2019 which was successfully remitted on 11th March 2019, consequently the orders came into effect.
6. The Applicant avers that the Respondent defied the stay execution order dated 20th February 2019 and instructed Betabase Auctioneers to commence execution of the judgment and decree of 9th October 2018. Betabase Auctioneers proceeded to serve proclamation notices upon the Applicant.
7. The Applicant avers that it subsequently demanded compliance of the stay order by reminding the 1st Respondent's then advocates of the same. Additionally, it proceeded to file another application dated 7th February 2020 seeking stay of the impending execution by Betabase Auctioneers which was dismissed as it was res judicata by dint that the former orders were still in effect.
8. However, in defiance of this court's order, the Applicant was once again served with warrants of execution of movable property and a proclamation notice dated 30th October 2024 this time by 2nd Respondent pursuant to the 1st Respondent's instructions.
9. It is the Applicant's case that despite its effort to inform the 1st Respondent to refrain from defying the court order, the 1st Respondent is still willing to proceed with execution of the warrants in defiance of the stay order.

1st Respondent's Case

10. In response to the Application, the 1st Respondent filed a replying affidavit dated 13th December 2024.
11. The 1st Respondent avers that the Applicant filed a notice of motion dated 23rd October 2018 seeking stay of execution pending the hearing and determination of the appeal of the judgment of this court delivered in ELRC No. 301: *Alexander Kasina Mukala v Kenya Power & Lighting Company Limited* on 9th October 2018. The court delivered a ruling on the same and granted stay orders on 20th February 2019.
12. The 1st Respondent avers that the court in its ruling of 20th February 2019, the Applicant was directed to deposit security for the decretal amount of Kshs. 637,312 on condition for issuance of the stay orders, however, the Applicant did not deposit the said amount within 30 days by the time warrants



of execution dated 3rd February 2020 was issued by ELRC Nairobi Deputy Registrar to Betabase Auctioneers.

13. In response to the warrants, the Applicant filed an application dated 7th February 2020 seeking an order for stay of execution of the proclamation attachment by Betabase Auctioneers and orders to set aside the same as it was in breach of the court order dated 20th February 2019. The court delivered its ruling on the application on 25th February 2020 that the same is res judicata and it was dismissed.
14. It is the 1st Respondent's case that vide the ruling dated 25th February 2020 dismissing the application, there is no valid stay order to stop him from executing the judgment dated 9th October 2018. Therefore, on 28th October 2024, Interfield Auctioneers were issued with warrants orders to execute the judgment and 2nd Respondent went ahead and filed copies of proclamation notice and warrants addressed then to the Applicant's advocates NOW Advocates LLP.
15. It is the 1st Respondent's case that the court of appeal case of COACA E276 of 2021 has nothing to do with the ruling dated 20th February 2019 and 25th February 2020.
16. The 1st Respondent avers that in respect to the certificate of delay issued to the Applicant on 3rd March 2022, the delay was deliberate because he received the proceedings on 24th February 2021 whereas the Applicant received the same on 3rd March 2022, one year after he received them. Further, the memorandum of appeal dated 3rd March 2022 was filed 4 years later after the notice of appeal dated 23rd October 2018 and was never served.

Applicant's Submissions

17. The Applicant submitted that the 1st Respondent deliberately and in bad faith disregarded this Court's orders for stay by proceeding with execution when there was a valid stay of execution in force. Further, the 1st Respondent was well aware that the Applicant had deposited the decretal amount in court in compliance with the condition as he adduced a letter dated 10th February 2020 which spoke on the amounts being deposited in court within 30 days.
18. It is the Applicant's submission that by holding its application dated 7th February 2020 is res judicata, this court did not in any way invalidate or vacate the existing orders for stay of execution issued on 20th February 2019. The dismissal of the application goes to show that this Court acknowledged the issues of stay had already been determined and appropriate orders made to that effect.
19. The Applicant submitted that the 1st Respondent assertion that the orders for stay were vacated by dint of the subsequent ruling of 25th February 2020 is flawed and only used to evade the wrath of this court.
20. The Applicant submitted that it has demonstrated that the 1st Respondent deliberately disobeyed court orders issued on 20th February 2019 and he intends to continue disobeying the same. The court should grant the orders sought in a bid to protect its dignity and sanctity; it placed reliance on the Court of Appeal case of *Sbimmers Plaza Limited v National Bank of Kenya Limited* [2015] KECA 945 (KLR) which states: -

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-



“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.”

1st Respondent’s Submissions

21. The 1st Respondent submitted that he has demonstrated the Applicant has not provided any evidence that it deposited the decretal sum as ordered by the court. Further, there was no stay order effective after the Applicant’s application declared res judicata and dismissed.
22. The 1st Respondent submitted that to find someone in contempt of court, a court order must exist, the person must have knowledge the order and that must have wilfully disobeyed. The Applicant filed a notice of motion dated 23rd October 2018 seeking stay orders so as to appeal judgment dated 9th October 2018 and up to date there is no substantive appeal in the court of appeal, therefore, the decretal amount of Kshs. 637,312 plus cost and interest be released.
23. The 1st Respondent submitted that the Applicant’s application dated 7th February 2020 was dismissed on grounds of res judicata, therefore, the Applicant wants to overrun this court’s ruling by bringing the same application in form of contempt of court rather than appeal that decision.
24. The 1st Respondent submitted that did not deposit the decretal sum with the court registry as required by the court order. There was no deposit receipt filed in the court registry by the time of execution. The Applicant wrote the Deputy Registrar on 10th February 2020 to get the court file transferred to accounts, therefore, the official receipt was not with the court registry after the ruling sated 20th February 2019. Therefore, the Applicant defaulted the ruling making the stay order ineffective.
25. The 1st Respondent submitted that for the Applicant’s documents adduced as KMM6 and KMM7 to be credible, the deposit slip has to be certified by the bank account clerks that received it and the court registry upon receipt to remove vagueness or doubt which is not the case herein.
26. It is the 1st Respondent’s submission that the Applicant will not suffer prejudice if this application is dismissed and the execution allowed.
27. I have examined the averments and submissions of the parties herein. It is true that this Court delivered its ruling in this matter on 20th February, 2019 allowing stay orders pending appeal. The condition granted was depositing of the decretal sum in Court within 30 days.
28. The applicant deposited the decretal sum on 11/3/2019 as per their exhibit KMM7 before Court. The applicant indeed deposited the decretal sum as directed before expiry of other 30 days granted by Court on 20/2/2019. Despite the compliance with the order of court allowing stay, the respondents proceeded to proclaim the applicants goods vide a proclamation dated 27th February 2020.
29. The respondents aver that there were no stay orders after another application filed by the applications dated 7th February 2020. It is true no orders were granted by Hon. Judge Mbaru who made a finding in her ruling of 18/2/21 who found the application was res judicata, this Court having already rendered itself on the same issue. That indeed was true as orders of stay were in force and the appeal is still pending before the Court of Appeal. The intended attachment and proclamation by the respondents cannot



therefore be as there are stay orders in force. The attempt to proclaim and attach the respondent's goods is in blatant disregard to this Court's orders and therefore contemptuous.

30. I do find that the respondents are in contempt of this Court's orders and are therefore guilty and liable to be punished by Court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH OF MAY, 2025.

HELLEN WASILWA

JUDGE

