



**Republic v Oigara, CBS, Chief Executive Officer, KCB Bank Kenya Limited & 3 others; Commission on Administrative Justice (Interested Party); Inyangu (Ex parte Applicant) (Employment and Labour Relations Miscellaneous E002 of 2023) [2025] KEELRC 1935 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1935 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS MISCELLANEOUS E002 OF 2023  
BOM MANANI, J  
JUNE 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**JOSHUA NYAMWEYA OIGARA, CBS, CHIEF EXECUTIVE OFFICER, KCB BANK KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PAUL RUSHDIE RUSSO, CHIEF EXECUTIVE OFFICER, KCB BANK KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JAPHETH OCHIENG ACHOLA, GROUP HUMAN RESOURCE DIRECTOR, KCB BANK KENYA LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**KCB BANK KENYA LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**COMMISSION ON ADMINISTRATIVE JUSTICE ..... INTERESTED PARTY**

**AND**

**DAVID MUGASIA INYANGU ..... EX PARTE APPLICANT**

**RULING**

1. On 30<sup>th</sup> January 2025, the court delivered its ruling on the 4<sup>th</sup> Respondent’s application dated 14<sup>th</sup> October 2024 seeking stay of execution pending appeal and ordered as follows:-

“...I grant the 4<sup>th</sup> Respondent’s plea for stay of execution of this court’s orders of 15<sup>th</sup> June 2023 requiring it (the 4<sup>th</sup> Respondent) to supply the *Ex-Parte* Applicant the documents set



out in the Interested Party's order of 5<sup>th</sup> May 2022 within 7 days of the order pending the hearing and determination of the intended appeal against the orders of 19<sup>th</sup> September 2024 to the Court of Appeal.

Costs of the application shall abide the outcome of the intended appeal.”

2. A brief history of the dispute between the parties will explain the genesis of the order. Through an application dated 3<sup>rd</sup> January 2023, the Ex-Parte Applicant moved this court for an order to compel the Respondents to furnish him with certain documents which he contends are in the custody of the 4<sup>th</sup> Respondent. The Ex-Parte Applicant's request was prompted by the Interested Party's letter dated 5<sup>th</sup> May 2022 which ordered the Group Human Resource Director of the 4<sup>th</sup> Respondent to furnish him with the documents in question.
3. After hearing the parties through written submissions, the court delivered its ruling on 15<sup>th</sup> June 2023 in which it partially allowed the Ex-Parte Applicant's request by ordering the 4<sup>th</sup> Respondent to supply him with the documents contained in the Interested Party's letter of 5<sup>th</sup> May 2022. The 4<sup>th</sup> Respondent was required to supply these documents within seven (7) days of that order.
4. Subsequently, the 4<sup>th</sup> Respondent moved the court through its application dated 29<sup>th</sup> February 2024 seeking to review the orders of 15<sup>th</sup> June 2023. The 4<sup>th</sup> Respondent contended that some of the documents which the court had ordered it to provide to the Ex-Parte Applicant did not exist. As such, it was impossible to comply with the orders.
5. After hearing the parties on the aforesaid application, the court rendered its ruling on 19<sup>th</sup> September 2024 declining the 4<sup>th</sup> Respondent's request for review. In effect and by this order, the 4<sup>th</sup> Respondent remained under obligation to furnish the Ex-Parte Applicant with the disputed documents in terms of the court order of 15<sup>th</sup> June 2023.
6. Aggrieved by the order of 19<sup>th</sup> September 2024, the 4<sup>th</sup> Respondent lodged a Notice of Intention to Appeal the said ruling. The said Notice was endorsed by the court's Deputy Registrar on 1<sup>st</sup> October 2024.
7. The record shows that the Ex-Parte Applicant had filed an application dated 13<sup>th</sup> October 2023 seeking to commit the 4<sup>th</sup> Respondent's officials to civil jail for contempt of the court order of 15<sup>th</sup> June 2023. This prompted the 4<sup>th</sup> Respondent to file the application dated 14<sup>th</sup> October 2024 seeking to stay execution of the order dated 15<sup>th</sup> June 2023 pending hearing and determination of its proposed appeal against the ruling of 19<sup>th</sup> September 2024 to the Court of Appeal.
8. After considering the application dated 14<sup>th</sup> October 2024, the court allowed it in terms of paragraph one of this ruling. It is this ruling that triggered the Ex-Parte Applicant's instant application dated 4<sup>th</sup> February 2025.

### **The Application Dated 4<sup>th</sup> February 2025**

9. In the application dated 4<sup>th</sup> February 2025, the Ex-Parte Applicant prays for a series of orders to wit the following:-
  - a. The matter be certified as urgent and fit for summary judgment.
  - b. The court be pleased to set aside its orders of 30<sup>th</sup> January 2025 in order to allow for execution of the orders of 15<sup>th</sup> June 2023.



- c. The court to cite the Respondent for contempt of court and to impose a fine of Ksh. 5,000,000.00 against it as an alternative to committing its officers to civil jail.
  - d. The court to declare that the Respondent has violated the Ex-Parte Applicant's constitutional rights under articles 27, 35 and 41 in the *Constitution*.
  - e. The court to order the 4<sup>th</sup> Respondent to compensate the Ex-Parte Applicant in the sum of Ksh. 5,000,000.00 for violation of his constitutional rights.
  - f. The court to award the Ex-Parte Applicant costs of the application.
10. The application is expressed to be filed pursuant to rules 10(3) & 74 (1) (d) of the *Employment and Labour Relations Court (Procedure) Rules, 2024*, Rule 85 of the *Court of Appeal Rules, 2022* and all other provisions of law. The Ex-Parte Applicant contends that court orders should not be issued in vain. As such, he contends that the 4<sup>th</sup> Respondent should be compelled to implement the order that issued on 15<sup>th</sup> June 2023.
  11. The Ex-Parte Applicant avers that the 4<sup>th</sup> Respondent has deliberately refused to implement the impugned orders. Yet, it has no active appeal against them.
  12. The Ex-Parte Applicant argues that the court order of 19<sup>th</sup> September 2024 which refused to review the earlier orders of 15<sup>th</sup> June 2023 is a negative order. As such, it cannot be the subject of a stay of execution order.
  13. The Ex-Parte Applicant further argues that the 4<sup>th</sup> Respondent has withdrawn its Notice of Appeal in line with rule 85 of the *Court of Appeal Rules*. As such, there is no appeal that warrants continuance of the stay orders.
  14. The Ex-Parte Applicant contends that having regard to the foregoing, this court should not assist the 4<sup>th</sup> Respondent to continue defying the order of 15<sup>th</sup> June 2023 by sustaining the stay of execution orders that are currently in force. As such, he prays that the orders for stay of execution be lifted.
  15. The Ex-Parte Applicant contends that continued refusal by the 4<sup>th</sup> Respondent to supply him with the impugned documents is a violation of his constitutional rights. He contends that the 4<sup>th</sup> Respondent's actions have violated his right to information, right not to be discriminated against and right to fair labour practise.
  16. The 4<sup>th</sup> Respondent has opposed the aforesaid application. It has filed an affidavit dated 17<sup>th</sup> February 2025 to anchor its opposition to the application.
  17. The 4<sup>th</sup> Respondent contends that the import of the court order of 19<sup>th</sup> September 2024 refusing to review the orders of 15<sup>th</sup> June 2023 was that it (the 4<sup>th</sup> Respondent) remained obligated to supply the Ex-Parte Applicant with the impugned documents. Yet, it allegedly does not have these documents.
  18. The 4<sup>th</sup> Respondent contends that its inability to supply the said documents triggered contempt of court proceedings against it. As such, its officers risked being committed to civil jail for failure to comply with valid court orders. Consequently, it became necessary for it to obtain orders to stay execution of the orders of 15<sup>th</sup> June 2023 as it pursues its appeal against the court's refusal to review the said orders.
  19. The 4<sup>th</sup> Respondent contends that the instant application by the Ex-Parte Applicant is vexatious, an abuse of the court process and res-judicata since the matters which he raises through it were considered and adjudicated on through the court's previous decisions. The 4<sup>th</sup> Respondent avers that the Ex-Parte Applicant had the opportunity to raise the matters he seeks to raise through the instant application



in his response to the application for stay of execution which has since been determined. As such, he cannot seek to challenge that application by filing this fresh application.

20. The 4<sup>th</sup> Respondent further contends that most of the matters which the Ex-Parte Applicant raises in the instant application can only be the subject of an appeal as opposed to an application for review since he appears to challenge the validity of the impugned ruling. As such, it contends that the application is bad in law and ought to be dismissed.

### **Analysis**

21. As pointed out earlier in the ruling, the instant application and the response to it raise several matters which require individualized consideration. As such, I will discuss them under various subheadings as here-below.

### **Whether some reliefs sought in the application are res-judicata**

22. The 4<sup>th</sup> Respondent avers that the question whether stay of execution of the orders which were issued on 15<sup>th</sup> June 2023 should be granted was determined in the court's ruling of 30<sup>th</sup> January 2025. The 4<sup>th</sup> Respondent contends that the matters which the Ex-Parte Applicant asks the court to consider in the instant application regarding stay of the said orders (the orders of 15<sup>th</sup> June 2023) ought to have been raised in his objection to the application for stay of execution dated 14<sup>th</sup> October 2024 which resulted in the court's ruling dated 30<sup>th</sup> January 2025. As such, it contends that the question whether or not the orders of 15<sup>th</sup> June 2023 should be stayed pending appeal is res-judicata.
23. The 4<sup>th</sup> Respondent contends that the Ex-Parte Applicant's attempts to revisit the matter of stay of execution of the orders of 15<sup>th</sup> June 2023 through the instant application amounts to attempts to conduct trial by instalments, a matter which is not permissible in law. As such, the present application should not be allowed.
24. The record shows that during the hearing of the application dated 14<sup>th</sup> October 2024 through written submissions, the parties addressed the court extensively on whether the orders that were issued on 15<sup>th</sup> June 2023 should be stayed. The court ruling on the application (the ruling dated 30<sup>th</sup> January 2025) demonstrates that the court considered the contrasting views expressed by the parties on the subject and further considered the linkage between the orders of 15<sup>th</sup> June 2023 and those of 19<sup>th</sup> September 2024.
25. The court noted that by its orders of 19<sup>th</sup> September 2024, it declined to review the orders of 15<sup>th</sup> June 2023 which required the 4<sup>th</sup> Respondent to supply the Ex-Parte Applicant with certain documents. As such, the orders of 19<sup>th</sup> September 2024 exposed the 4<sup>th</sup> Respondent to execution proceedings in enforcement of the orders of 15<sup>th</sup> June 2023. And hence the decision to stay execution of the orders of 15<sup>th</sup> June 2023 pending resolution of the proposed appeal against the orders of 19<sup>th</sup> September 2024.
26. The court having decided the question of stay of execution of the orders of 15<sup>th</sup> June 2023 pending hearing of the proposed appeal against the orders of 19<sup>th</sup> September 2024 in its ruling of 30<sup>th</sup> January 2025, it became functus officio in respect of the matter of stay of execution of the orders of 15<sup>th</sup> June 2023. As such, it is not entitled to revisit this issue except by way of review.
27. Once the court decided on the stay application, the question whether stay of execution of the orders of 15<sup>th</sup> June 2023 should be granted or not became res-judicata and it (the court) is not entitled to revisit it as suggested by the Ex-Parte Applicant. The matter cannot be re-litigated before it (the court) except by way of review.



28. A purposeful examination of the Ex-Parte Applicant's application dated 4<sup>th</sup> February 2025 demonstrates that it is not an application for review. Although the application is expressed to be filed under rule 74 (1) (d) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2024](#) which deals with review, there is no single prayer in it which speaks and or relates to review. As such, it cannot, by any stretch of imagination, be perceived as a motion for review.

#### **Whether the Ex-Parte Applicant is entitled to orders to execute the order of 15<sup>th</sup> June 2023**

29. Having arrived at the conclusion that it is improper for the Ex-Parte Applicant to invite me to set aside the orders which stayed execution of the orders of 15<sup>th</sup> June 2023 outside a review process in order to allow for execution proceedings before the intended appeal to the Court of Appeal has been heard and determined, I decline the aforesaid invite. The foregoing being the case, the Ex-Parte Applicant's prayers: for summary judgment; to cite the 4<sup>th</sup> Respondent for contempt of court; and to impose a fine for contempt of court all fall by the wayside. The Ex-Parte Applicant will have to either await the outcome of the proposed appeal to the Court of Appeal or move the Court of Appeal to vacate the impugned orders for stay of execution before he can resume execution proceedings.

#### **Whether the Ex-Parte Applicant is entitled to pursue damages for violation of his constitutional rights in these proceedings**

30. The Ex-Parte Applicant filed the application dated 3<sup>rd</sup> January 2023 seeking an order to enforce the Interested Party's order dated 5<sup>th</sup> May 2022 compelling the 4<sup>th</sup> Respondent to supply him with certain documents. By the court's ruling delivered on 15<sup>th</sup> June 2023, this request was granted effectively rendering the proceedings in the cause as spent except for execution proceedings which have been stayed as a result of the appeal which is pending before the Court of Appeal.
31. The foregoing being the position, the Ex-Parte Applicant cannot introduce additional causes of action which are entirely new in a matter which is essentially closed save for execution proceedings. As such, it was improper for the Ex-Parte Applicant to seek compensation for alleged violation of his constitutional rights through the instant application. Such request ought to be the subject of separate proceedings. Consequently, the aforesaid prayers are declined.

#### **Whether the proposed appeal to the Court of Appeal has been withdrawn**

32. The Ex-Parte Applicant asserts that the 4<sup>th</sup> Respondent has withdrawn its Notice of Appeal in terms of rule 85 of the [Court of Appeal Rules](#). As such, it has no pending appeal before the Court of Appeal.
33. Under the aforesaid rule, a party who has lodged a Notice of Appeal will be deemed to have withdrawn it if he does not file the intended appeal within the appointed time (sixty (60) days of lodging the Notice of Appeal as per rule 84 of the [rules](#)). However, the abated Notice of Appeal must be removed from the court's record by either the Court of Appeal on its own motion or upon an application by the Respondent to the appeal.
34. The Ex-Parte Applicant has not tabled evidence to demonstrate that the Court of Appeal has struck out the impugned Notice of Appeal either on its own motion or on his application. As such, this court has no basis upon which it can declare that the Notice of Appeal has been withdrawn.



### **Whether the court did not have jurisdiction to grant the orders for stay of execution in its ruling of 19<sup>th</sup> September 2024**

35. The Ex-Parte Applicant contends that the court lacked jurisdiction to stay the orders which issued on 19<sup>th</sup> September 2024 because the said orders merely declined the 4<sup>th</sup> Respondent's request for review of the orders of 15<sup>th</sup> June 2023. In his view, the orders of 19<sup>th</sup> September 2024 were negative orders. As such, they could not be stayed.
36. The above contention by the Ex-Parte Applicant is incorrect. A look at the court ruling of 30<sup>th</sup> January 2025 demonstrates that the court stayed enforcement of the order of 15<sup>th</sup> June 2023 pending the hearing and determination of the proposed appeal against the orders of 19<sup>th</sup> September 2024 in which the court had rejected the 4<sup>th</sup> Respondent's request to review the order of 15<sup>th</sup> June 2023.
37. The ruling of 15<sup>th</sup> June 2023 shows that the orders which the court issued required the 4<sup>th</sup> Respondent to supply the Ex-Parte Applicant with certain documents. As such, they were positive orders capable of being stayed.
38. The Ex-Parte Applicant contends that in any event the Notice of Appeal which was lodged against the ruling of 19<sup>th</sup> September 2024 relates to third parties. As such, the court had no jurisdiction to allow the 4<sup>th</sup> Respondent's request for stay of execution by based on it (the Notice of Appeal).
39. Again, this argument is erroneous. A perusal of the Notice of Appeal on record demonstrates that it was filed on behalf of all the Respondents including the 4<sup>th</sup> Respondent.
40. Conversely, the Ex-Parte Applicant contends that the 4<sup>th</sup> Respondent did not lodge a Notice of Appeal against the ruling dated 15<sup>th</sup> June 2023. As such, the court had no jurisdiction to issue an order of stay of execution of the said ruling.
41. As was pointed out earlier in the ruling, the issue that the Ex-Parte Applicant raises above was discussed and ruled upon in the court's ruling of 30<sup>th</sup> January 2025. Once this happened, this court became functus officio on the subject (*John Gilbert Ouma v Kenya Ferry Services Limited* [2021] eKLR). If the Ex-Parte Applicant was aggrieved by the decision, the right procedure was for him to appeal to the Court of Appeal as opposed to applying for the decision to be set aside on account of want of jurisdiction.

### **Whether the matters raised by the Ex-Parte Applicant are suitable for an application for review**

42. Even assuming that I am wrong in the views which I have expressed earlier in the ruling, I must still ask myself whether the grievances which the Ex-Parte Applicant raises in the application are suitable for an application for review or an appeal. As noted earlier, the Ex-Parte Applicant's complaints range from the contention that the court: lacked jurisdiction to grant the impugned orders; could not legitimately stay negative orders; could not issue stay orders on the basis of a Notice of Appeal filed by or on behalf of third parties to the action; had no right to stay execution of the orders arising from its ruling of 15<sup>th</sup> June 2023 in the absence of an appeal against them. The Ex-Parte Applicant is thus asking the court to set aside this orders and allow him to execute the orders of 15<sup>th</sup> June 2023.
43. To my mind, the aforesaid issues do not provide suitable grounds for an application for review. Rather, they provide grounds for appeal against the court's decision.



44. What the Ex-Parte Applicant is questioning through the instant application is the legitimacy of the court orders which were issued on 30<sup>th</sup> January 2025. In essence, he is asking the court to re-evaluate and vacate the said orders so that he can execute the orders of 15<sup>th</sup> June 2023.
45. Considered from this viewpoint, the *Ex-Parte* Applicant's application is basically requesting the court to sit on appeal on its decision of 30<sup>th</sup> January 2025 with a view to re-evaluating and vacating the said decision. This is impermissible.
46. A court is not entitled to sit on appeal on its decisions. If a party holds the view that the court misconstrued the law or acted without jurisdiction in making a decision, the proper procedure is to appeal against the decision but not to file an application for review. In this respect, I agree with the 4<sup>th</sup> Respondent's submissions that the instant application ought to fail in so far as it invites the court to sit on appeal on its decision.
47. Commenting on the subject in the case of *National Bank Of Kenya Limited v Ndungu Njau* [1997] KECA 71 (KLR), the Court of Appeal observed as follows:-

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.”

#### **Determination**

48. In the premises, I arrive at the conclusion that the Ex-Parte Applicant's application dated 4<sup>th</sup> February 2025 is without merit.
49. As such, it is dismissed.
50. Costs of the application are award the 4<sup>th</sup> Respondent.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF JUNE, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Ex-Parte Applicant

.....for the 4<sup>th</sup> Respondent

**ORDER**



In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

