



Republic v Chief Magistrates Court Nakuru & another; Elemech Engineering Company Limited & another (Interested Parties); Muthendu (Exparte Applicant) (Judicial Review E012 of 2024) [2025] KEELRC 1703 (KLR) (13 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1703 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
JUDICIAL REVIEW E012 OF 2024**

**AN MWAURE, J
JUNE 13, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF MAGISTRATES COURT NAKURU 1ST RESPONDENT

THE HON ATTORNEY GEENERAL 2ND RESPONDENT

AND

ELEMECH ENGINEERING COMPANY LIMITED INTERESTED PARTY

AMOLAK SINGH ISHER & SONS INTERESTED PARTY

AND

MAINA KAGARA MUTHENDU EXPARTE APPLICANT

RULING

Introduction

1. The ex-parte Applicant herein filed a Notice of Motion dated 5th February 2025 seeking the following orders that:
 1. Spent
 2. Spent
 3. That the orders issued by Hon. R. Kefa on 31st January, 2025 in Nakuru MC ELRC E073 of 2022 be declared irregular and be set aside/lifted



4. This Honourable Court be pleased to find that the interested parties herein in contempt of this court's orders issued on have disobeyed the order 3 issued by this Court on 17th December, 2024 and punishes them accordingly
5. Costs of the application be provided for
6. The Court be pleased to make any further order as it may deem it.

Ex-parte Applicant's case

2. The ex-parte Applicant avers that on 17th December, 2024 this Honourable Court made an order staying any further proceedings in Nakuru MC ELRC No. E073 of 2022 pending the hearing and determination of the application for Judicial Review.
3. The ex-parte Applicant avers that the said orders also stayed irregular orders of stay of execution issued by the subordinate court on 13th December, 2024.
4. The ex-parte Applicant avers that the interested parties filed an application before this Honourable court seeking to set aside the orders of 17th December, 2024.
5. The ex-parte Applicant avers that on 7th January 2025, Nakuru MC ELRC No. E073 of 2023 was mentioned before Honourable V. Adet who acknowledged receipt of this Court's orders staying further proceedings in that court.
6. The ex-parte Applicant avers that the substantive Judicial Review application was filed and served, but during the mention on 31st January, 2025 the Interested Parties' advocate denied service, leading the court to order re-service and set a new mention date.
7. However, the ex-parte Applicant avers that the Interested Parties had secretly obtained stay of execution orders from the subordinate court, despite an existing ELRC order staying proceedings.
8. The ex-parte Applicant avers that the magistrate, Hon. R. Kefa proceeded to issue adverse orders, in Nakuru MC ELRC No. E073 of 2023 effectively overruling the ELRC's decision.
9. The ex-parte Applicant avers that this action, along with the Interested Parties' defiance of the stay order, amounted to contempt of court, undermining the rule of law and demonstrating an attempt to bypass due process.
10. The ex-parte Applicant avers that further orders issued by Hon. R. Kefa on 31st January 2025 being bad in law, ultra vires, null and void should be set aside forthwith.
11. The ex-parte Applicant avers that the application is necessary to uphold justice, safeguard the integrity of the court, and reinforce the rule of law, and prays that the Interested Parties bear the costs of the application.

1st and 2nd Interested Parties Grounds of opposition and replying affidavit

12. In opposition to the application, the 1st and 2nd Interested parties filed grounds of opposition dated 12th February 2025 and replying affidavit dated 12th March 2025.
13. In the Grounds of opposition, the 1st and 2nd Interested parties seeking the application to be dismissed on the grounds that the Ex-parte Applicant sought judicial review and was granted a stay order on 17th December 2024, halting proceedings in Nakuru MC ELRC No. E074, which does not exist. Instead, the valid stay orders applied to Nakuru MC ELRC No. E073 of 2022. Despite this, the Ex-parte Applicant breached the stay orders by selling attached motor vehicles and issuing a



further proclamation on 24th January 2025. After the Lower Court upheld the stay orders on 30th January 2025, the Ex-parte Applicant filed an application on February 5, 2025, allegedly to cover his wrongdoing. The 1st and 2nd Interested parties contend that the application is procedurally defective and an abuse of the court process.

14. In the replying affidavit, the 1st and 2nd interested parties aver that the court order issued on 17th December 2024 granted a stay of further proceedings in Nakuru MC ELRC No. E074. However, it was later clarified that no such case exists in the Kenyan judicial system.
15. The 1st and 2nd interested parties aver that the judicial review proceedings were actually initiated against Nakuru MC ELRC No. E073 of 2022, Maina Kagara Muthendu V Elemech Engineering & Co. Ltd & Amolak Singh Isher & Sons*.
16. The 1st and 2nd interested parties aver that the order being challenged was ambiguous, referencing a non-existent case, and thus could not have been properly breached and assert that the alleged violation is unfounded since the stay order did not apply to the correct case.
17. The 1st and 2nd interested parties aver that no valid court order was breached as Nakuru MC ELRC No. E074 does not exist. Instead, the stay of execution order applied to Nakuru MC ELRC No. E073 of 2022.
18. Despite knowing this, the 1st and 2nd interested parties aver that the Ex-parte Applicant allegedly violated the stay order by selling attached motor vehicles and issuing further proclamations.
19. The 1st and 2nd interested parties aver that they alerted the lower court on 30th January 2025, and it acted accordingly to halt execution.
20. The 1st and 2nd interested parties aver that the Ex-parte Applicant's contempt application is an attempt to cover up his wrongdoing
21. The 1st and 2nd interested parties urge this Honourable court to dismiss the application with costs as a deceptive tactic.
22. Parties canvassed the application by way of written submissions.

Ex-parte Applicant submissions

23. The Ex-parte Applicant submitted that the interested parties argue that the application violates Section 9(2) of the Fair Administration Act and Rules 10(a) & (b) of the Fair Administrative Rules. The Ex-parte Applicant relied on the case of Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696, where the Court of Appeal held that a preliminary objection consists of point of law arising from pleadings that, if argued, could dispose of the suit.
24. Section 9 (2) of the Fair Administrative Actions Act provides as follows:

“The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.”
25. Rules 10 (a) & (b) of the Fair Administrative Rules also provides as follows:

“A claim for judicial review shall not be entertained by the court if the claim directly and substantially in issue



- a. has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title; and
 - b. has been heard and determined by a court of competent jurisdiction.”
26. The Ex-parte Applicant argues that the cited provisions are irrelevant to the case, as the Judicial Review application does not involve the Fair Administrative Actions Act or the review of an administrative body’s decision. Instead, the Ex-parte Applicant assert that the application is grounded in Article 165(6) of *the Constitution* and Order 53 of the Civil Procedure Rules, invoking the Superior Court’s supervisory jurisdiction over a subordinate court.
27. The Ex-parte Applicant submitted that Article 10 of *the Constitution* establishes the rule of law as a binding national value, applying to all state organs, officers, and public officials. This includes the Judiciary and Magistrates, who are obligated to uphold the rule of law by complying with court orders.
28. The Ex-parte Applicant submitted that the lower court acted without jurisdiction by issuing orders on 31st January 2025, after the superior court had stayed proceedings on 17th December 2024 citing the cases *Central Bank of Kenya V Ratilal Automobiles Ltd* (2018) KECA 31 KLR and *Macfoy V United Africa Co Ltd* (1961) 3 ALL ER 1169, where the courts held that actions taken in breach of court orders are null and void. The Ex-parte Applicant also submitted the interested parties are engaging in forum shopping to obstruct execution.
29. Additionally, the Ex-parte Applicant contend that the interested parties acted in contempt by proceeding before the subordinate court despite the stay order. The Ex-parte Applicant relied on the cases of *Mutitika V Baharini Farm Ltd* (1985) KECA 60 (KLR) and *Refrigeration & Kitchen Utensils Ltd v Gulabchand Popatlal Shah Civil Application No. 39 of 1990*, they argue that knowingly violating court orders obstructs justice. The Ex-parte Applicant urge this Honourable court to hold the interested parties in contempt and enforce its authority, citing *Shimmers Plaza Ltd V National Bank of Kenya Ltd* (2015) KECA 945 (KLR), which emphasized that court orders must be obeyed without exception.

The 1st and 2nd Interested parties' submissions

30. The 1st and 2nd Interested parties submitted that contempt of court requires strict proof and must meet four essential criteria: a valid and clear order properly served, knowledge of the order by the contemnor, wilful and deliberate disobedience, and proof beyond reasonable doubt. In *Mutitika v Baharini Farm Ltd* (1985) eKLR, the Court of Appeal held that contempt is a quasi-criminal offense requiring a high standard of proof. Additionally, legal scholars affirm these four elements as the foundation for establishing civil contempt. To establish civil contempt, four elements must be proven: the order was clear, unambiguous, and binding; the defendant had knowledge or notice of the order; the defendant breached its terms; and the breach was deliberate.
31. The 1st and 2nd Interested parties submitted that the contempt application is flawed, as it is based on an ambiguous and unclear court order referencing Nakuru MC ELRC No. E074, a non-existent case. The 1st and 2nd Interested parties relied on the case of *Republic V Principal Secretary, Ministry of Defence & Another Ex Parte George Kariuki Waithaka* (2019) eKLR, which held that contempt must be based on a clear, valid, and enforceable order. Since there was no stay order for Nakuru ELRC No. E073 of 2022, they contend that no contempt occurred.



32. The 1st and 2nd Interested parties argue that there was no breach of a court order, as the referenced case, Nakuru MC ELRC No. E074, does not exist. The 1st and 2nd Interested parties contend that the contempt application is a tactic by the Ex-parte Applicant to cover up his prior violation, including the illegal sale of the attached motor vehicles. The 1st and 2nd Interested parties relied on the case of Abu Chiaba Mohamed V Mohamed Bwana Bakari & Others Civil Appeal No. 238 of 2003, the court emphasized that one cannot rely on their wrongdoing to invalidate a legitimate claim. In Republic v County Government of Kiambu Ex Parte James Nderitu & Others (2019) eKLR, asserting that contempt applications should not be used for harassment or litigation tactics.
33. The 1st and 2nd Interested parties concluded stating that the Ex-parte Applicant has failed to prove contempt and urge this Honourable Court to dismiss the application with costs.

Analysis and Determination:

34. The gist of this application is whether the orders issued by Hon. R Kefa on 31st January 2025 in Nakuru MC ELRC E 073/2022 should be set aside or lifted. The orders were as hereunder: -
 1. THAT this application be certified urgent, service be dispensed with thereof and the same be heard ex-parte in the first instance.
 2. THAT pending the hearing and determination of the instant Application, the Respondent, Interested Party and/or any of their agents be restricted from further interfering with, proclaiming and/or attaching any of the Applicant's properties.
 3. THAT the irregular warrants of attachment and sale said to be given by this Honourable Court on 17th February, 2025" (sic) and ordered to be returned to the Honourable Court on or before the "17th of January, 2025" (sic) be cancelled, revoked, nullified and/or set aside unconditionally.
 4. THAT the proclamation of the Applicants goods by the Interested Party and the Proclamation Notice served upon the Applicants on 24th January, 2024 (pursuant to the warrants of sale and attachment referred to in Prayer 2 herein above) be cancelled, revoked, nullified and/or set aside unconditionally.
 5. THAT costs of this application be borne by the Respondent and the Interested Party.
35. The Interested parties were granted stay of execution orders on 18th October 2024. They failed to meet the conditions given for grant of those orders by Hon. Justice Rika J.
36. The Interested Parties made several applications seeking grant of ex-parte orders of stay of execution and variation of conditions for stay and the same were rejected.
37. One such application was to be heard on 10th December 2024 and the Interested Party failed to turn up and application was dismissed.

A further application was filed on 11th December 2024 seeking another interim ex-parte order of stay of execution and review of the orders of the previous day and the same were rejected.
38. On 13th December 2024 the Interested Parties filed a suit in the Chief Magistrate's Court ELRC 073/2022 for orders for stay of execution of judgment and decree and Hon. Peter Aloyce Ndege granted prayers 1, 2, and 3 of the application dated 13th December 2024. So an order for stay of execution was granted in the subordinate court after the superior court rejected the same and ordered the application to proceed to hearing.



39. On 30th January 2025 the Respondents who are the Interested Parties in this application JR 012/2024 made an application to restrain the Respondents or Interested Parties or their agents from interfering or proclaiming and or attaching the Applicants' properties. The Hon. Magistrate Hon. R. Kefa granted the above prayer on 30th January 2025.
40. In the meantime, this court had issued orders on 17th December 2024 inter-alia stating
- “Leave is granted for the Applicant to apply for an order of certiorari to remove into this Honourable Court and quash the order issued on 13th December by the 1st Respondent through Hon. Peter Aloyce Ndege (Magistrate) in Nakuru MC ELRC No. 074 OF 2024.
- The order No. 3 – provided there were to be stay of any further proceedings in Nakuru MC ELRC 074 OF 2024.”
41. The court finds there was clear forum shopping by the Interested Parties. The Appeal Case No. 068/2024 the parties are Elemech Engineering Ltd and Another -VS- Maina Kagara Muthendu. The Honourable Judge Rika J. gave conditional stay of execution on 18th October 2024.
- The Appellants who are now Respondents and Interested Parties in other suit failed to meet the conditions for stay. They filed several other stay of execution orders. When they were not granted their orders they rushed to the subordinate court and now came up with another case number.
42. In case No. 073/2022 Chief Magistrates Court the Parties were the same but they added Adunja Traders Auctioneer as Interested Party. They got the orders for restraining of proclamation of the goods of the Applicant. All the while this was on 31st January 2025 but there were pending matters in the High Court.
43. In case Appeal 068/2024 the stay orders were rejected by the High Court. It was improper to now go for similar orders from the subordinate court even though they were coached differently. They did not pray for stay of execution in lower court but asked for restraining orders that the Respondent/Interested Party were not to proclaim the Respondent's goods. One and the same prayers.
44. Now the case has transformed into a JR 012 of 2024 and the parties are still the same. The Chief Magistrate and Hon. The Attorney General are included in this one. It is not clear whether this has been filed by the Ex-parte Applicant or the Interested Parties.
45. The court has had to spend and indeed should I say to waste a lot of time trying to decipher the happenings in these cases. It is clear the Respondents now the Interested Parties in this Judicial Review were determined to get their orders at every costs including ignoring High Court orders to get their way in the subordinate court.
46. What is interesting is that the lower court issued orders for a stay of execution against a superior court. According to the hierarchy of courts, the ELRC is a superior court which has equal status to the High Court as set out in Article 162(2) of *the Constitution*. It is unfortunate that a lower court issued orders contrary to High Court orders. The question is whether the learned magistrate was aware of the High Court Orders in place or not.
47. The court is of the view that the lower court orders cannot go against the ELRC order in accordance with Article 162(2) of *the Constitution*. In Kenya Hotel Properties Limited V Attorney General & 5 others [2020] KECA 427 (KLR), where the Court of Appeal reaffirmed judicial hierarchy, stating that subordinate courts cannot override superior court's decisions.



48. In view of the foregoing, the court finds that the application dated 5th February 2025 is merited and is allowed as follows:

1. Prayer No. 3 is granted.
2. The prayer for contempt is not proved and so the same is not allowed and no punishment will be meted on the Interested Parties.

49. The costs of the application will be in the cause.

50. This is a matter that has had a going on and full of drama. The best option is for the parties to attempt to resolve the same amicably. They are urged to so consider.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 13TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

