



**Republic v Chief Magistrates Court Nakuru & another; Elemech Engineering Company Limited & another (Interested Parties); Njarama (Exparte Applicant) (Judicial Review E013 of 2024) [2025] KEELRC 1984 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1984 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
JUDICIAL REVIEW E013 OF 2024  
AN MWAURE, J  
JUNE 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CHIEF MAGISTRATES COURT NAKURU ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ELEMECH ENGINEERING COMPANY LIMITED ..... INTERESTED PARTY**

**AMOLAK SINGH ISHER & SONS ..... INTERESTED PARTY**

**AND**

**SAMUEL NDERITU NJARAMA ..... EXPARTE APPLICANT**

**RULING**

**Introduction**

1. The ex-parte Applicant herein filed a Notice of Motion dated 5<sup>th</sup> February 2025 under Certificate of Urgency seeking the following orders that:
  1. Spent
  2. Spent
  3. That the orders issued by Hon. R. Kefa on 31<sup>st</sup> January,2025, in Nakuru MC ELRC E074 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 17<sup>th</sup> 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 fit.

### **Ex-parte Applicant's case**

2. The ex-parte Applicant avers that on 17<sup>th</sup> December, 2024, this Honourable Court made an order staying any further proceedings in Nakuru MC ELRC No. E074 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 the irregular orders of stay of execution issued by the subordinate court on 13<sup>th</sup> 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 17<sup>th</sup> December, 2024.
  5. The Ex-parte Applicant avers that on 7<sup>th</sup> January 2025, Nakuru MC ELRC No. E074 of 2023 was mentioned before Honourable V. Adet, who acknowledged receipt of the Honourable Court's orders staying further proceedings in that matter.
  6. The Ex-parte Applicant avers that the substantive Judicial Review application was filed and served upon all parties, but delays were caused when the Interested Parties' advocate, Mr. Teddy Ochieng, denied service.
  7. The Ex-parte Applicant avers that the court ordered re-service and scheduled a mention for 4<sup>th</sup> March 2025.
  8. However, Ex-Parte Applicant avers that the Interested Parties, through their advocates, the firm of Teddy & Co. Advocates, obtained a stay of execution order from a subordinate court on 31<sup>st</sup> January 2025.
  9. The Ex-parte Applicant avers that the stay order was issued by Hon. R. KEFA, Principal Magistrate, despite the fact that the ELRC's order staying proceedings was included in the application.
  10. The Ex-parte Applicant avers that this action amounts to the subordinate court sitting on appeal of a superior court's decision. Furthermore, the Interested Parties' conduct is seen as contemptuous and an attempt to undermine the rule of law.
  11. The Ex-parte Applicant avers that, having been denied a stay by the ELRC, the Interested Parties resorted to questionable means to obtain it elsewhere.
  12. The Ex-parte Applicant avers that the orders issued by Hon. R. KEFA are legally invalid, ultra vires, and should be set aside to uphold justice and protect the authority of the court.
  13. The Ex-parte Applicant avers that the Interested parties, having acted in bad faith, should bear the costs of the application.
- 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties Grounds of opposition and replying affidavit
14. In opposition to the application, the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties file grounds of opposition dated 12<sup>th</sup> February 2025 and a replying affidavit dated 12<sup>th</sup> March 2025.



15. In the Grounds of opposition, the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties seeking the application to be dismissed on the grounds that the ex-parte Applicant sought judicial review, obtaining a court order on 17<sup>th</sup> December 2024, that granted a stay on proceedings in Nakuru MC ELRC No. E074 OF 2022. Despite this stay, the Ex-Parte Applicant allegedly proceeded with execution by selling the Interested Parties' attached motor vehicles. The Interested Parties later informed the Lower Court of the stay orders, leading to further legal complications. The current application, dated 5<sup>th</sup> February 2025, is challenged as being procedurally and substantively defective, allegedly an abuse of the court process intended to conceal prior violations.
16. In the replying affidavit, the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties aver that the Ex-Parte Applicant filed an urgent application seeking leave for judicial review to quash an order issued by Hon. Peter Aloyce Ndege in Nakuru MC E&LRC No. E074 of 2024.
17. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties aver that the court granted the leave and ordered a stay of further proceedings, including execution processes.
18. However, in violation of this stay order, the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties aver that the Ex Parte Applicant allegedly proceeded with execution, extracting warrants of attachment and selling the Interested Parties' motor vehicles.
19. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties aver that they informed the lower court of this violation, and the court deemed the execution process irregular and stopped further proceedings.
20. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties aver that the Ex Parte Applicant is using the contempt application to cover up their breach of court orders.
21. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties aver that the lower court acted within its discretion and that the current application before this Honourable Court should be dismissed for lack of merit.
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 a 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 provide 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 the matter in question revolves around whether a subordinate court can issue orders in a case already stayed by a superior court. Hon. R. Kefa issued orders on 13<sup>th</sup> January 2025, despite being aware of an existing superior court order barring such action. The Ex Parte Applicant contends that this action violates judicial hierarchy, as outlined in Article 162 of *the Constitution*, which establishes the ELRC as equal in status to the High Court. Furthermore, Article 165(6) of *the Constitution* grants the High Court supervisory jurisdiction over subordinate courts, reinforcing the argument that lower courts must comply with superior court orders. Article 10 of *the Constitution* emphasizes adherence to the rule of law, binding all state organs and officers, including magistrates, to respect and uphold judicial directives. Therefore, it is asserted that no judicial officer is above the law and must obey court orders.
  28. The Ex-parte Applicant submitted that once the superior court stayed proceedings, the subordinate court lacked jurisdiction to issue further orders, making the orders of 31<sup>st</sup> January 2025, a legal nullity. The Ex-parte Applicant relied on the case of *Central Bank of Kenya & another V Ratal Automobiles Limited & 10 others* [2018] KECA 31 (KLR) Court of Appeal emphasize that actions taken in violation of court orders are void and without effect. Lord Denning’s ruling in *Macfoy V United Africa Co Ltd* [1961] 3 ALL ER 1169 reinforces the principle that void actions cannot be salvaged.
  29. The Ex-parte also submitted that the Interested Parties are on forum shopping, seeking favourable rulings by approaching subordinate courts despite the availability of appropriate superior court channels. 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 decisions.
  30. The Ex-Parte Applicant submitted that the Interested Parties knowingly violated a superior court’s stay order by seeking and obtaining orders from a subordinate court, which amounts to contempt of court. In *Mutitika V Baharini Farm Ltd* [1985] KECA 60 (KLR), the court stated as follows:

“It is perfectly clear on the authorities that anyone who, knowing of an injunction, or an order of stay, willfully does something, or causes others to do something, to break the injunction or interfere with the stay, is liable to be committed for contempt. See *Acrow v Rex Chainbelt Inc* [1971] 3 All ER 1175 at page 1180. The reason is that by doing so he (or she) has conducted himself (or herself) so as to obstruct the course of justice and so has attempted to set the order of the court at naught.”



31. In Refrigeration and Kitchen Utensils Ltd V Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990, it was observed as follows:

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their Solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question..... he should apply to the court that it might be discharged. As long as it exists, it must not be disobeyed.”

32. The Ex-Parte Applicant submitted that the Interested Parties have deliberately acted in contempt of court to obstruct a lawful execution. In Shimmers Plaza Limited V National Bank of Kenya Limited [2015] KECA 945, the Court of Appeal stated as follows:

“We reiterate 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 26<sup>th</sup> 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 upon us by *the Constitution...*”

33. The Ex-parte Applicant urged this Honourable court to allow the application dated 5<sup>th</sup> February, 2025, as prayed.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties’ submissions**

34. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties submitted that establishing whether or not a party to a case has proved contempt of court was set out in the Court of Appeal case of Mutitika V Baharini Farm Limited (Supra).

35. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties relied on the case of Katsuri Limited V Kapurchand Depar Shah 2016] KEHC 6447 (KLR), the court stated that a contempt of court requires proof that an order was clear, known to the alleged contemnor, breached, and that the breach was deliberate.

36. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties submitted that the Ex Parte Applicant claims that they acted in contempt by obtaining an order from the Nakuru Magistrate’s Court despite a stay of proceedings issued on 17<sup>th</sup> December 2024. However, the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties submitted that they did not breach the order, as their application in MCELRC E074 of 2024 merely sought to set aside illegal warrants of attachment and sale by the Ex-Parte Applicant.

37. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties also submitted that they informed the court of the stay order and attached it as evidence, contending that informing a court of an existing order does not constitute contempt. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties further submitted that if contempt were committed, it would have been by the Magistrate, not them.

38. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties submitted that even if there was a breach of court orders, it was not deliberate, and contempt cannot be established without proof of wilful disobedience. In Republic V



Ahmad Abolfathi Mohammed & Another (2018) eKLR, the Supreme Court stated that contempt must be exercised cautiously and only when clear intentional defiance is proven.

39. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties contend that their application in the lower court was not a violation but merely an effort to inform the court of the stay order. In contrast, they allege that the Ex-Parte Applicant knowingly breached the stay order by executing warrants of attachment and sale, showing disregard for the judicial directive.
40. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties further submitted that a stay of further proceedings includes a stay of execution, meaning the Ex Parte Applicant acted in contempt when proceeding with attachment and sale. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties accuse the ex-parte Applicant of attempting to shift blame and cover their own violation by citing them for contempt.
41. In *Abu Chiaba Mohamed v Mohamed Bwana Bakari & Others* (2005) KECA, the Court of Appeal emphasize that no one should rely on their own wrongdoing to challenge a valid claim.
42. In conclusion, the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties submitted that lifting the lower court's stay order at the request of the Ex Parte Applicant would undermine judicial integrity, as it would contradict prior rulings and create inconsistency in the legal system.
43. The 1<sup>st</sup> and 2<sup>nd</sup> Interested parties urged this Honourable Court to dismiss the application.

#### **Analysis and Determination**

44. The gist of this application is whether the orders issued by Hon. R Kefa on 31<sup>st</sup> 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 17<sup>th</sup> February, 2025" (sic) and ordered to be returned to the Honourable Court on or before the "17<sup>th</sup> 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 24<sup>th</sup> 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.
45. The Interested parties were granted stay of execution orders on 18<sup>th</sup> October 2024. They failed to meet the conditions given for grant of those orders.
46. 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.
47. One such application was to be heard on 10<sup>th</sup> December 2024 and the Interested Party failed to turn up and application was dismissed.



- A further application was filed on 11<sup>th</sup> 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.
48. On 13<sup>th</sup> 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 13<sup>th</sup> 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.
49. On 30<sup>th</sup> 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 30<sup>th</sup> January 2025.
50. In the meantime, this court had issued orders on 17<sup>th</sup> December 2024 inter-alia stating
- “Leave is granted for the Applicant to apply for an order or certiorari to remove into this Honourable Court and quash the order issued on 13<sup>th</sup> December by the 1<sup>st</sup> 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.”
51. 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 18<sup>th</sup> October 2024.
- The Appellants who are now Respondents and Interested Parties in other suits 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.
52. 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 31<sup>st</sup> January 2025 but there were pending matters in the High Court.
53. 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.
54. 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.
55. 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.
56. 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 or not.

57. 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 decisions.
58. In view of the foregoing, the court finds that the application dated 5<sup>th</sup> 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.
59. The costs of the application will be in the cause.
60. This is a matter that has had a lot 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 13<sup>TH</sup> 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

