



Kenya Plantation & Agricultural Workers Union v Eastern Produce Kenya Limited (Cause 125 of 2015) [2025] KEELRC 1691 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1691 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE 125 OF 2015
AN MWAURE, J
JUNE 11, 2025**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT
AND
EASTERN PRODUCE KENYA LIMITED RESPONDENT**

RULING

Introduction

1. The Applicant/Respondent filed a Notice of Motion dated 29th July 2024 under Certificate of Urgency seeking the following orders that:
 1. The sum of Kshs.173,185/= deposited in court pending hearing and determination of appeal No. Nakuru CACA No. 308 of 2019 be released to M/S Kibichiy & Co. Advocates, given that the said appeal has been determined and the same allowed in toto.
 2. Such other orders be made in the interest of justice as may be expedient
 3. Costs of this application be provided for.
2. The application is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, sections 1A, 3A and 63(e) of the *Civil Procedure Act* and all other enabling provisions of the law.

Applicant/Respondent's case

3. The application is supported by the grounds on the face of it and the supporting affidavit of Edwin K. Ruto, the Applicant/Respondent's advocate.
4. The Applicant/Respondent avers that judgment was delivered in the High Court in favour of the Plaintiff on 1st April, 2017.



5. The Applicant/Respondent avers that it appealed against the judgment vide a Memorandum of Appeal dated 1st October 2019.
6. The Applicant/Respondent avers that the appeal was delivered via email on 26th April, 2024, and the lower court case was dismissed with costs.
7. The Applicant/Respondent avers that the sum of Kshs. 173,185/= being security pending appeal was deposited in court on 3rd July, 2018.
8. The Applicant/Respondent avers that the security sum of Kshs. 173,185/= to be released to Kibichiy & Co. Advocates, being their advocates on record as the matter is marked as closed.
9. The Applicant/Respondent urged this Honourable Court to allow the application as prayed.
10. The Claimant/Respondent did not file any response to oppose the said application.

Analysis and determination

11. The court has perused the application together with the supporting affidavit; the issue for determination is whether to order the release of the decretal sum of Kshs. 173,185/= deposited in court pending hearing and determination of appeal, Nakuru CACA No. 308 of 2019, be released to M/S Kibichiy & Co. Advocates.
12. Section 91(1) of the *Civil Procedure Act* provides as follows:

“Where and in so far as a decree is varied or reversed, the court of first instance shall, on the application of the party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position they would have occupied but for such decree or such part thereof as has been varied or reversed; and for this purpose, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.”

13. In this instant case, the appeal was dismissed vide the judgment delivered by the Court of Appeal on 26th April 2024 where it was held that the Claimant/Respondent was not entitled to the decretal sum held in court. That being the case, it is fair and reasonable that the money to be released to the Applicant/Respondent.
14. In view of the foregoing, this Honourable Court finds that the application is merited and therefore allows the release of the sum of Kshs.173,185/= deposited in court be released to M/S Kibichiy & Co. Advocates as prayed.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH 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

