



**Cedar Pharmacare & 2 others v Onyango (Miscellaneous Application  
E024 of 2025) [2025] KEELRC 1683 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1683 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E024 OF 2025**

**S RADIDO, J  
JUNE 10, 2025**

**BETWEEN**

**CEDAR PHARMACARE ..... 1<sup>ST</sup> APPLICANT**

**DR RICHARD GATUIKU GITONGA ..... 2<sup>ND</sup> APPLICANT**

**DR JANE KAJUJU GATUIKI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JECKONIAH ONYANGO ..... RESPONDENT**

**RULING**

1. For determination is a Motion dated 5 February 2025 by the applicants seeking orders:
  - i. That the amount of Kshs 179,423/- be deposited in Court as the full and final settlement of the judgment debt as expressly indicated in the judgment delivered, dated and signed on 24<sup>th</sup> February 2020 by Justice Radido Stephen in ELRC Cause No. 347 of 2012, Jeckoniah Onyango versus Cedar Pharmacare Ltd and 2 Others (hereinafter referred to as the subject judgment).
  - ii. That the Honourable Court deems the deposit of the above referenced amount as compliance with the judgment debtor's obligation to satisfy the subject judgment.
  - iii. That the costs of this application be provided for.
2. The grounds supporting the Motion were that the Respondent had declined or refused to accept a cheque dated 5 August 2024 from the applicants settling the decree, and that the applicants were intent on fulfilling their legal obligations to the Respondent.
3. The Respondent filed a replying affidavit on 24 March 2025 (the Court notes that the affidavit was filed in Nairobi Cause No. 347 of 2012, Jeckoniah Onyango v Cedar Pharmacare Ltd & 2 Others).



4. In the affidavit, the Respondent's advocate deponed that although the Court did not award costs, interest on the decretal sum was payable on the strength of section 26 of the *Civil Procedure Act* and that he was praying for the award of interest on the decretal sum.
5. Pursuant to Court directions issued on 7 May 2025, the applicants filed their submissions on 21 May 2025 and the Respondent on 23 May 2025.
6. The applicants urged in their submissions that since the Respondent had rejected settlement cheques offered to him through his advocates, it was open to them to settle the decree in terms of Order 22 Rule 1 of the Civil Procedure Rules which allow a party to deposit the decretal sum into Court in settlement of a decree. The applicants also cited *Janedra Raichard Shah & 2 Ors v Mistri Valji Naran Samat* (2016) KEELC 600 (KLR).
7. On the question of interest, the applicants submitted that the award of interest was discretionary and that the trial Court had not awarded any interest and that the Respondent had not sought a review of the order declining to award interest. The applicants cited case law.
8. The Respondent on his part contended that since the applicants only attempted to settle the decretal sum nearly 4 years after judgment without any justifiable cause, then the Court ought to exercise the discretion allowed it under section 26(1) & (2) of the *Civil Procedure Act* and decree the payment of interest at 12% per annum. The Respondent cited *Kipchumba v BOG Tambach Teachers Training College* (2023) KECA 802 (KLR).
9. The Court has considered the Motion, affidavits and submissions and can make the following determinations.
10. First, the firm of Nyauchi & Co. advocates did not get the leave of the Court to come on record as contemplated by Order 9 Rule 9 of the Civil Procedure Rules.
11. Second, the instant Motion should have been made in Nairobi Cause No. 347 of 2012, and not presented as a Miscellaneous Motion.
12. Third, the Court did not award the Respondent interest in the judgment delivered on 24 February 2020.
13. Consequently, the ratio in the Kipchumba decision relied on by the Respondent is not applicable. The Kipchumba authority turned on a dispute on the applicable rate of interest where the trial Court had awarded interest but not stated the rate of interest.
14. Fourth, section 26 of the *Civil Procedure Act* allows the Court to award interest. In the instant case, the Court did not award interest, and by the time the applicants moved the Court, there was no formal or any application by the Respondent seeking the Court's discretion to award interest or review the interest aspect of the judgment.
15. Last, it is open to a judgment creditor to deposit into the Court any decretal sums awarded by the Court. The Respondent herein has declined overtures from the applicants to receive the decretal sum, and the Court will therefore allow the Motion.
16. Before concluding, the Court notes that the delivery of this Ruling has been brought forward with notice to the parties because the Court will not sit on 26 June 2025.



## **Orders**

17. In consideration of the above, the Court allows the Motion dated 5 February 2025 in the following terms:
- i. The applicants are to deposit the decretal sum of Kshs 179,423/- into the Court on or before the end of 26 June 2025.
  - ii. Upon the deposit, the applicants are deemed to have fully and finally satisfied the decree.
18. The applicants are to have the costs of the Motion.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 10<sup>TH</sup> DAY OF JUNE 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances;

For applicant Njuguna, Kahari & Kiai Advocates

For Respondent Nyauchi & Co. Advocates

Court Assistant Wangu

