



**Musasia v Egerton University (Appeal E016 of 2025)
[2025] KEELRC 2299 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2299 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E016 OF 2025**

**J RIKA, J
JULY 31, 2025**

BETWEEN

REUBEN MUSASIA APPELLANT

AND

EGERTON UNIVERSITY RESPONDENT

RULING

1. The Respondent obtained Judgment against the Appellant at the CM's Court Civil Case Number 1322 of 2007, on 13th July 2023, in the sum of Kshs. 373,136.
2. The Respondent subsequently filed an Application dated 25th March 2024, seeking attachment of the Appellant's 2/3 salary, which he earns from his current Employer, Pwani University, in satisfaction of the decree.
3. The Appellant did not participate in the hearing of the Claim against him at the Trial Court, attributing non-participation to the negligence of his Advocates. He therefore made an application dated 17th February 2025, seeking an order for stay of execution of decree, and for leave to amend his Statement of Defence and Counterclaim.
4. The Applications were heard simultaneously, and a Ruling delivered on 12th March 2025.
5. The Respondent was granted an order for attachment of the Appellant's salary, while the Appellant's pursuit of an order of stay of execution of decree, and leave to amend his Statement of Defence and Counterclaim, was declined.
6. The Appellant filed a Memorandum of Appeal against the Ruling, dated 14th March 2025.
7. He simultaneously filed an Application dated 14th March 2025, seeking stay of execution of the Ruling dated 12th March 2025, pending hearing of the Appeal.



8. The thrust of his Appeal and Application, is that the order attaching 2/3 of his salary is illegal, null and void. It is contrary to Section 44 of the *Civil Procedure Act*, which provides that 2/3 of the salary of a public officer or other person in employment, is not liable for attachment.
9. The Application is founded on the Affidavit of the Appellant, apparently sworn on 14th March 2025. The date is blurred by the stamp and signature of the Commissioner for Oaths.
10. The Respondent opposes the Application, through its Senior Legal Officer Janet Bii. She filed a Replying Affidavit, sworn on 26th March 2025.
11. She explains that the Appellant, has not approached the Court with clean hands. There were numerous demands and reminders made to the Appellant to settle the decretal sum. He adamantly refused to settle.
12. Bii states that Section 19[3] of the *Employment Act*, allows an Employer to deduct amounts not exceeding 2/3 of an Employee's salary, towards settlement of a debt owed by the Employee.
13. The Application and the Appeal are intended to delay the Respondent, from enjoying the fruits of its litigation, in a Claim that was finalized after pending in Court for more than 15 years.
14. The Respondent submits that it is a solid and reputable institution, and the Appellant will be able to recover the decretal sum, in event the Appeal is successful.
15. Parties agreed that the Application is heard and determined on the strength of their Affidavits and Submissions. They confirmed filing of the Submissions at the last appearance before the Court on 15th May 2025.

The Court Finds: -

16. The Court does not find any fault with the order of the Trial Court declining the Appellant's prayer, to file an amended Statement of Response, and Counterclaim out of time. The Claim had been in Court for over 15 years. The parties had an overabundance of time, to file, amend and exchange pleadings. The Appellant had the opportunity to fully respond to the Claim against him.
17. His Appeal on account of the refusal by the Trial Court to grant him leave to file amended pleadings, does not amount to an arguable ground with a chance of success, to warrant grant of an order of stay of execution of the Trial Court's Ruling.
18. Paragraph 9 of the Trial Court's Ruling was that, "an order is hereby issued to Pwani University, to withhold and remit 45% of the Respondent's salary every month, and remit the same to the Advocate of the Judgment Creditor or the Court."
19. The Appellant submits at paragraph 4[b] of his Notice of Motion, that this order is illegal, null and void, as it is contrary to Section 44 of the *Civil Procedure Act*. According to him, 2/3 of the salary of a public officer or other person in employment, is not liable to attachment under this law.
20. Attachment of salaries and allowances under the *Civil Procedure Act*, as borne out in the Ruling of the Trial Court [paragraph 8], and the Appellant's Submissions [paragraph 4[a], is governed by Order 22, Rule 42, the *Civil Procedure Rules*.



21. The law that directly addresses the subject matter, in the employment jurisdiction, is Section 19[3] of the [Employment Act](#), 2007, which states: -

“ Without prejudice to any right of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection [1], may be made by an Employer from the wages of his Employee, at any one time, shall not exceed two-thirds of such wages, or such additional or other amount, as may be prescribed by the Minister either generally or in relation to a specified Employer or Employee, or class of Employers or Employees, or any trade or industry.”

22. The gist in both laws above, is that the total deductions made on the salary of an Employee, must not exceed 2/3 of his total monthly salary.

23. 45% of the Appellant’s salary ordered by the Trial Court to be deducted, would have to take into account other statutory and sundry deductions made, so as not to overshoot the 2/3 limit.

24. Unfortunately, the Appellant did not disclose in his Affidavit what his total gross monthly and net salary is, to enable the Court determine if 45% deduction imposed by the Trial Court, would be offensive to the 2/3 limit rule.

25. There is no pay slip attached to the Affidavit. Throughout his Submissions, the Appellant does not give his salary figures, and show the current deductions. He just submits on bare percentages.

26. The Court is therefore not able to exercise its discretion, and grant an order of stay of execution, without the full details of the Appellant’s monthly salary.

27. There is persuasion in the argument by the Respondent, that in any event, it is a well-established institution, against which the Appellant would not struggle in recovering the decretal sum, in event he succeeds on Appeal. It is noted also, that the Claim in the Trial Court took over 15 years to conclude. The Appellant chose not to participate in its hearing. It is not in the interest of justice to deny the Respondent the fruits of its litigation. The Appellant can exercise his right of appeal, and recover the decretal sum, in event his Appeal succeeds.

28. He has not persuaded the Court that 45% deduction from his monthly salary, is in breach of Section 19 [3] of the [Employment Act](#), and Order 22 Rule 42 of the [Civil Procedure Rules](#).

It is ordered:-

- a. The Application dated 14th March 2025 filed by the Appellant is declined.
- b. Costs in the Appeal.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 31ST DAY OF JULY 2025.

JAMES RIKA

JUDGE

