



Eldotec Consultancy Services Ltd v Adhiambo & 5 others (Employment and Labour Relations Appeal E017, E018, E019 & E020 of 2023 (Consolidated)) [2025] KEELRC 2079 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2079 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL
E017, E018, E019 & E020 OF 2023 (CONSOLIDATED)

MA ONYANGO, J

JULY 10, 2025

BETWEEN

ELDOTEC CONSULTANCY SERVICES LTD CLAIMANT

AND

YVETTE SALLY ADHIAMBO 1ST RESPONDENT

STIMA DT SACCO SOCIETY LTD 2ND RESPONDENT

AS CONSOLIDATED WITH

EMPLOYMENT AND LABOUR RELATIONS APPEAL E018 OF 2023

BETWEEN

ELDOTEC CONSULTANCY SERVICES LTD CLAIMANT

AND

GRACE WAMBUI MAINA 1ST RESPONDENT

STIMA DT SACCO SOCIETY LTD 2ND RESPONDENT

AS CONSOLIDATED WITH

EMPLOYMENT AND LABOUR RELATIONS APPEAL E019 OF 2023

BETWEEN

ELDOTEC CONSULTANCY SERVICES LTD CLAIMANT

AND



KIMBERLY BIRECH 1ST RESPONDENT
THE CO-OPERATIVE BANK KENYA LTD 2ND RESPONDENT

AS CONSOLIDATED WITH
EMPLOYMENT AND LABOUR RELATIONS APPEAL E020 OF 2023

BETWEEN

ELDOTEC CONSULTANCY SERVICES LTD CLAIMANT

AND

MILKA ANYANGO OTIENO 1ST RESPONDENT

STIMA DT SACCO SOCIETY LTD 2ND RESPONDENT

JUDGMENT

1. The Appellant herein was the Claimant in Eldoret CMELRC Cause Numbers E074 of 2023; E075 of 2023; E077 of 2023; and, E078 of 2023 wherein it had sued the Respondents herein seeking refund of monies erroneously paid to them arising from an error in the payment of their terminal dues in excess of their terminal dues.
2. In Eldoret CMELRC Cause Numbers E074 of 2023 the Appellant sued Yvette Sally Adhiambo and Stima DT SACCO Society Ltd as 1st and 2nd Respondents respectively for refund of Kshs. 436,070.56.
3. In Eldoret CMELRC Cause Numbers E075 of 2023 the Appellant sued Milka Anyango Otieno and Stima DT SACCO Society Ltd as 1st and 2nd Respondents respectively for refund of Kshs. 441,220.41.
4. In Eldoret CMELRC Cause Numbers E077 of 2023 the Appellant sued Kimberly Birech and The Co-Operative Bank Kenya Ltd as 1st and 2nd Respondents respectively for refund of Kshs. 422,458.
5. In Eldoret CMELRC Cause Numbers E078 of 2023 the Appellant sued Grace Wambui Maina and Stima DT SACCO Society Ltd as 1st and 2nd Respondents respectively for refund of Kshs. 530,481.42.
6. The appeals arise from the ruling of Hon. Rosemary Onkoba dated 7th August, 2023 in which she declined to certify the Appellants applications urgent on 2nd August, 2023 in all the suits.
7. The grounds of appeal in all the files which are identical are that:
 - a. The Learned Magistrate erred in law and in fact by failing to certify the application dated 2nd August 2023 as urgent, yet sufficient reasons had been set out.
 - b. The Learned Magistrate erred in law and in fact in the manner she exercised her discretion not to certify the matter as urgent in view of the fact that no reasons were set out for such refusal in light of the circumstances of the case.
 - c. The Learned Magistrate erred in law and in fact in failing to consider the grounds in support of the urgency set out in the Notice of Motion dated 2nd August 2023.
 - d. The Learned Magistrate erred in law and in fact in failing to issue a temporary injunction on the application dated 2nd August 2023, yet there was clear evidence that the Appellant would



suffer irreparable damage if the 1st Respondent was to utilize the erroneously overpaid funds amounting to Kshs. 530,481.42.

- e. The Learned Magistrate erred in law and in fact in failing to appreciate the weight of the legal issues raised by the Appellant in the application dated 2nd August 2023 for interim orders.
 - f. The Learned Magistrate erred in law and in fact in applying the wrong principles of law in denying the temporary injunctions sought in the application dated 2nd August 2023.
8. The Appellant prayed for orders that the orders of Hon. Rosemary Onkoba dated 2nd August, 2023 be set aside and the Appellant be granted interim orders pending hearing and determination of the applications dated 2nd August, 2023. The Appellant further prayed that costs of the appeal be awarded to the Appellant.
 9. The Appeals were filed together with applications seeking similar orders as had been declined by the trial court which were granted by this Court presided over by the Duty Judge in Kakamega Hon. Lady Justice Jemimah Keli on 31st August, 2023 as follows:
 1. That The Application dated 28th August, 2023 is certified urgent to be heard on priority basis.
 2. That An interim order is issued to the 2nd respondent pending the hearing of the application interpartes to withhold any monies it holds in the 1st Respondent Account No. 015008 not exceeding 436,070.56.
 3. That The application be served within 3 days for response in 14 days. The applicant is at liberty to file reply thereafter.
 4. That Hearing interpartes on the 20th September 2023 at ELRC ELDORET
 10. At the time the Appellant filed these suits in the Chief Magistrates Court in Eldoret it had also filed a similar suit in this court being ELRC Eldoret Cause No. E019 of 2023 against Oliver Jesse Otieno and DT SACCO Society Ltd in which it sought refund of Kshs. 409,359.44. the suit was filed herein in respect of Oliver Jesse Otieno the 1st Respondent, whose gross salary was above the pecuniary jurisdiction of the subordinate courts unlike the claims against the other former employees of the Appellant whose claims were within the pecuniary jurisdiction on the Magistrates' courts.
 11. In view of the fact that all five suits arose out of the same course of action the parties agreed that Eldoret ELRC Cause No. E019 of 2023 Eldotec Consultancy Services Ltd v Oliver Jesse Otieno and DT SACCO Society Ltd be selected as a test suit and the determination therein be applied to all the suits herein.
 12. The decision in No. E019 of 2023 Eldotec Consultancy Services Ltd v Oliver Jesse Otieno and DT SACCO Society Ltd has now been delivered as follows:

“On the claim against the 2nd Respondent, I find that the Claimant has not proved its case against the 2nd Respondent as there is evidence on record that as at the time it was served with the court orders directing the freezing of the 1st Respondent's account, the 1st Respondent had already utilized the excess funds.

In the end, I find that the 1st Respondent was overpaid a sum of Kshs 409,359.44 by the Claimant and I enter judgment in favor of the Claimant against the 1st Respondent in the sum of Kshs 409,359.44.”
 13. The same decision is adopted and applied in the suits herein and judgment is entered as hereunder.



14. In Eldoret CMELRC Cause Numbers E074 of 2023 Eldotec Consultancy Services Ltd v Yvette Sally Adhiambo and Stima DT SACCO Society Ltd
 - i. Judgment is entered for the Appellant against the 1st Respondent in the sum of Kshs. Kshs. 436,070.56
 - ii. The case against the 2nd Respondent is dismissed with costs to the 2nd Respondent to be paid by the 1st Respondent
15. In Eldoret CMELRC Cause Numbers E075 of 2023 Eldotec Consultancy Services Ltd v Milka Anyango Otieno and Stima DT SACCO Society Ltd
 - i. The case against the 2nd Respondent is dismissed with costs to the 2nd Respondent to be paid by the 1st Respondent
 - ii. Judgment is entered for the Appellant against the 1st Respondent in the sum of Kshs. Kshs. 441,220.41
16. In Eldoret CMELRC Cause Numbers E077 of 2023 Eldotec Consultancy Services Ltd v Kimberly Birech and The Co-Operative Bank Kenya Ltd
 - i. The case against the 2nd Respondent is dismissed with costs to the 2nd Respondent to be paid by the 1st Respondent
 - ii. Judgment is entered for the Appellant against the 1st Respondent in the sum of Kshs. 422,458.
17. In Eldoret CMELRC Cause Numbers E078 of 2023 Eldotec Consultancy Services Ltd v Grace Wambui Maina and Stima DT SACCO Society Ltd
 - i. The case against the 2nd Respondent is dismissed with costs to the 2nd Respondent to be paid by the 1st Respondent
 - ii. Judgment is entered for the Appellant against the 1st Respondent in the sum of Kshs. 530,481.42.
 - iii. Appellant shall bear his own costs to the appeal.
18. CMELRC Cause No. E074 of 2023; CMELRC Cause No. E075 of 2023; CMELRC Cause No. E077 of 2023; and, CMELRC Cause No. E078 of 2023 are deemed to be compromised in accordance with this judgement and are accordingly terminated with no order as to costs. A copy of this judgment will be submitted to the Chief Magistrates Court for placement in each of the files and the Chief Magistrate shall mark the said suits duly terminated.
19. Orders accordingly.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 10TH DAY OF JULY 2025.

MAUREEN ONYANGO.

JUDGE

