



Family Bank Limited v Njue; Kenya Commercial Bank & another (Interested Parties) (Cause E889 of 2023) [2025] KEELRC 2049 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2049 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E889 OF 2023
BOM MANANI, J
JULY 10, 2025**

BETWEEN

FAMILY BANK LIMITED CLAIMANT

AND

ELIAS KINYUA NJUE RESPONDENT

AND

KENYA COMMERCIAL BANK INTERESTED PARTY

STANBIC BANK INTERESTED PARTY

RULING

1. The Respondent in the cause filed the application dated 4th February 2025 seeking, inter alia, the following orders:-
 - a. That the court finds the Claimant, the 1st and 2nd Interested Parties in contempt of the court orders which were issued on 29th January 2025 restraining him from transacting, withdrawing, transferring, using and or in any other way dealing with the funds on account number 010xxxxxx948 at Stanbic Bank Limited in the sum of Ksh. 5,092,149.60 pending the hearing and determination of the application.
 - b. That the court finds that the 1st and 2nd Interested Parties colluded with the Claimant to transfer Ksh. 2,250,000 from account number 010xxxxxx948 at Stanbic Bank Limited to account number 13xxxxxx85 at KCB Bank Limited despite the court order of 29th January 2025 freezing transactions on account number 010xxxxxx948 at Stanbic Bank Limited.
 - c. That the court issues summons against the Chief Executive Officers of the Claimant, the 1st and 2nd Interested Parties to show cause why they should not be held in contempt of court for



violating the freeze orders which were issued by the court on 29th January 2025 and 8th July 2024 respectively.

- d. That the court issues an order to reverse the funds transferred above back into account number 010xxxxxx948 at Stanbic Bank Limited.
2. The application is based on the grounds appearing on the face of it. It is further supported by the Respondent's affidavit and further affidavits dated 4th February 2025 and 5th March 2025 respectively.
3. In the affidavits, the Respondent contends that the court issued an order on 29th January 2025 through which it barred him from undertaking any transactions on account number 010xxxxxx948 at Stanbic Bank Limited pending determination of the application dated 29th January 2025. He contends that despite the said order, the Claimant colluded with the two Interested Parties to transfer Ksh. 2,250,000 from account number 010xxxxxx948 housed at the 2nd Interested Party to account number 13xxxxxx85 housed at the 1st Interested Party.
4. In the Respondent's view, the aforesaid action by the three entities violated the order of 29th January 2025 and an earlier order which was issued on 8th July 2024. As such, he prays that the Claimant, the 1st and 2nd Interested Parties be found liable for contempt of court.
5. The Claimant does not object to the request to reverse the impugned transfer with the consequence that the funds revert to account number 010xxxxxx948 at Stanbic Bank Limited as long as the money is preserved on that account in terms of the court order freezing the account. However, it opposes the Respondent's plea that its officers be found liable for contempt of court.
6. According to the Claimant, at the time the 1st Interested Party transferred the impugned funds to it (the Claimant), it (the 1st Interested Party) was unaware of the court order which issued on 30th January 2025. The Claimant further avers that when the 1st Interested Party wired the money to its (the Claimant's) account, it (the 1st Interested Party) did not inform it (the Claimant) of this action. As such, it (the Claimant) contends that it (the Claimant) did not deliberately disregard the court orders.
7. The two Interested Parties have opposed the application. They contend that they were not served with the orders in question before they effected the impugned transfer.
8. Further, the 2nd Interested Party contends that the process of transfer of the impugned funds was commenced at the instance of the Claimant long before the orders in question were issued. As such, it denies that it acted in cahoots with the Claimant and the 1st Interested Party to defeat the court orders.

Analysis and Determination

9. I have considered the application and found it wanting in a number of respects. As a consequence, it is bound to fail.
10. First, the court did not issue any orders affecting account number 010xxxxxx948 at Stanbic Bank Limited on 29th January 2025 as purported by the Respondent. The record shows that the orders were issued on 30th January 2025. As such, the application, in so far as it purports that the orders were issued on 29th January 2025, is defective.
11. Second, the order which the court issued on 8th July 2024 did not affect account number 010xxxxxx948 at Stanbic Bank Limited. As such, it (the order of 8th July 2024) is of no relevance to the application.
12. Third, the application does not refer to the provisions of law under which it is brought. It is always important for a party who is moving a court of law to state the law under which he is doing so. This



is critical if only to demonstrate that the court’s jurisdiction has been properly invoked. It is improper for parties to simply present requests to court without indicating under which provisions of law the requests are made.

13. No less than the Supreme Court has underscored the significance of this requirement. In *Njibia v Kimani & another* [2015] KESC 19 (KLR), the court, expressed itself on the matter as follows:-

“ ... It is trite law that a Court of law has to be moved under the correct provisions of the law.”

“Hence, without thus identifying the proper legal framework for the motion, an application is liable to be struck out.”

14. Finally, it is critical to point out that the entities whom the Respondent cites as Interested Parties in the application have never been made parties to the suit. They were neither joined in the action by the court on its own motion nor by the Respondent or Claimant through a formal application. The Respondent simply impleaded them as parties in the instant application without a request for their joinder.
15. Order 1 rule 10 of the *Civil Procedure Rules* provides for substitution and addition of parties to a suit. The provision does not contemplate introduction of additional parties to an action without a formal application except where this is done by the court on its own motion. It was therefore improper for the Respondent to add the Interested Parties to the present action without leave of the court.
16. The court is unwilling to sanitize the discrepancies in the application by turning a blind eye to them. Consequently, the application fails.
17. Nevertheless, the court notes that at the time the sum of Ksh. 2,250,000 was transferred from account number 010xxxxxx948 at Stanbic Bank Limited to account number 13xxxxxx85 at KCB Bank Limited, there was already a freeze order on account number 010xxxxxx948 at Stanbic Bank Limited. As such and in order to protect the integrity of the judicial process, the court, on its own motion invokes section 12 (3) (viii) of the *Employment and Labour Relations Court Act* as read with sections 3A and 63 (e) of the *Civil Procedure Act* to direct KCB Bank Limited to reverse the transfer of Ksh. 2,250,000 from account number 13xxxxxx85 housed by it back to account number 010xxxxxx948 held by Stanbic Bank Limited.
18. If the impugned funds had been paid out by KCB Bank Limited to the Claimant as suggested by KCB Bank Limited, the Claimant is ordered to reverse the payment back to KCB Bank Limited within three working days of this order. In turn, KCB Bank Limited is directed to transmit the funds to account number 010xxxxxx948 at Stanbic Bank Limited within three working days of receipt of the money from the Claimant.
19. For the avoidance of doubt, the aforesaid directions should not be construed as impleading Stanbic Bank Limited and KCB Bank Limited in the suit. Since there was no order to implead the two as parties in the action, they remain non-parties until properly impleaded if there is need for their inclusion in the suit
20. I make no order as to costs.

DATED, SIGNED AND DELIVERED ON THE 10TH JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:



..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

