



REPUBLIC OF KENYA



KENYA LAW
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**Auto Continental Limited v Chome (Appeal E053 of 2022)
[2024] KEELRC 46 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELRC 46 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E053 OF 2022
AK NZEI, J
JANUARY 25, 2024**

BETWEEN

AUTO CONTINENTAL LIMITED APPELLANT

AND

FRANKLINE NGALA CHOME RESPONDENT

*(Being an appeal from judgment of Hon. D. Mbeja – PM at Mombasa
CM-ELR No. 722 of 2019 delivered on 18th February, 2022)*

RULING

1. The appeal herein was dismissed with costs by this Court vide a Ruling delivered on 22nd June 2023. On 12th September 2023, the Respondent, Frakline Ngala Chome, filed a Notice of Motion dated 8th September 2023 seeking the following orders:-
 - a. That the Court be pleased to make an order directing the NCBA Bank Moi Avenue Branch Mombasa to release the sum of kshs. One million, six hundred and fifty-nine thousand, eight eight (1,659,088) to the firm of Ernest Mogaka & Associates, which were jointly held as security pending disposal of the instant appeal in account No (Particulars Withheld) between Stephen Jumbale & Company Advocates And Ernest Mogaka & Associates.
 - b. That costs of the application be awarded to the Respondent/Applicant.
2. The application is predicated on the Respondent/Applicant's supporting affidavit sworn on 8th September 2023. It is deponed in the said affidavit:-
 - a. that the Respondent/Applicant obtained judgment in CM-ELR case No 722 of 2019 on 18/2/2022 for Kshs One million, four hundred and sixty four thousand, three hundred and ninety two and sixty seven cents (1,464,392.67), costs and interest.



- b. that the said sum was deposited at the Ncba Bank Moi Avenue Branch Mombasa in a joint account held by the firms of Stephen Jumbale & Company Advocates and Ernest Mogaka & Associates pursuant to a Court order made on 20/7/2022 in ELRC Misc. No E052 of 2022 (Auto Continental v Frankline Ngala Chome).
 - c. that the said sum was deposited as security pending hearing and disposal of the instant appeal pursuant to the aforesaid orders made in Mombasa ELRC MISC. No E052 of 2022.
 - d. that the appeal herein was determined through a Ruling rendered on 22/6/2023, and that the sums deposited as security in the joint account now belong to the Respondent/Applicant by virtue of the judgment of a Court of law.
 - e. that the Appellant/Respondent has not been cooperative in facilitating release of the funds, despite demand.
3. Among the documents annexed to the aforesaid supporting affidavit is a copy of an extracted order given by Hon. Justice Byram Ongaya on 15/7/2022 in Mombasa ELRC Misc. Cause No E052 of 2022 (Auto Continental Limited v Franklin Ngala Chome). The said extracted order reads as follows:-
- a. that the judgment sum now fixed at Kshs 1,621,497.67 be deposited in an interest earning account opened in the joint names of the parties' advocates and be deposited by 23/9/2022.
 - b. that subject to order (1) above, there be stay of execution of the decree by the trial Court herein and Memorandum of Appeal be filed and served by 22/7/2022.
 - c. that the Applicant do expeditiously file and serve a record of appeal.
 - d. mention on 27/10/2022 at 9.00am.
4. The instant appeal was instituted pursuant to the foregoing order; and was subsequently dismissed vide this Court's Ruling delivered on 22/6/2023.
5. The Respondent/Applicant now seeks, vide the Notice of Motion dated 8/9/2023, to have the amount of money deposited into a joint interest earning bank account pursuant to the order referred to in paragraph 3 of this Ruling released to him. The said application has not been opposed by the Appellant/Applicant pursuant to this Court's Rules of procedure.
6. This court will not, however, allow the application as it is not seized of the cause pursuant to which the money in issue was deposited in the bank. For good order, the Respondent/Applicant is hereby directed to file a similar application for release of the said amount in issue in this court's Misc. Cause No E052 of 2022 (Auto Continental Limited v Franklin Ngala Chome) for determination by the Court seized of that matter.
7. The Notice of Motion dated 8/9/2023 is hereby struck off with no order as to costs.
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25TH JANUARY 2024

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable



Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... Appellant /Applicant

.....Respondent

