



Bati & another v Kenya Commercial Bank (Employment and Labour Relations Cause 196B of 2014) [2024] KEELRC 822 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 822 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 196B OF 2014**

MN NDUMA, J

APRIL 18, 2024

BETWEEN

JULIUS BII KIPYEGON BATI 1ST CLAIMANT

ROBERT WATIILA 2ND CLAIMANT

AND

KENYA COMMERCIAL BANK RESPONDENT

RULING

1. The respondent/applicant by a notice of motion dated 14/11/2023 seeks for an order in the following terms:-
 1. Spent
 2. spent
 3. That pending the hearing and determination of the intended appeal to the Court of Appeal, there be stay of execution of the award delivered on the 20/01/2020 and any consequent decree thereon.
 4. That this honourable court be pleased to review and/or vary the consent order dated 18th December requiring the applicant to deposit the decretal amount in a joint interest earning account at a mutually agreeable commercial bank in the names of the applicant and the 1st and 2nd respondents' advocates within 30 days of the consent.
 5. That this honourable court be pleased to order the applicant to deposit the decretal amount in court.
 6. That costs of this application be in the intended appeal



2. The application is premised on grounds 1 to 19 set out on the face of the notice of motion and buttressed in the supporting affidavit of Lilian Sogo head counsel – litigation of the respondent the gist of which is that the court entered judgment in favour of the respondents/claimants on 20/1/2020. That the respondent lodged a notice of appeal and filed a notice of motion application dated 2/3/2020 seeking stay of execution of the decree pending hearing and determination of the intended appeal.
3. That by consent of the parties dated 18/12/2020, parties agreed to have stay of execution of the award on condition that the decretal amount is deposited in a joint interest earning account mutually agreed by the parties' advocates which order was adopted by the court on the 27/1/2021.
4. In compliance with the order, the applicant's advocates forwarded a duly executed Standard Chartered Bank Account – opening forms to the respondents' advocates on the 8/12/2020.
5. That despite several follow-up with the respondents/claimants' advocates, the joint bank account was not opened by the respondent's advocates at the Standard Chartered Bank.
6. Thereafter, the respondents/claimants' advocates forwarded ABSA Bank Account opening form which were duly executed and forwarded to the respondents' advocates on 19/8/2021.
7. Despite follow-up with the respondents/claimants' advocates no joint account has been opened at either Standard Chartered Bank or ABSA Bank Limited.
8. The applicant is desirous of depositing the decretal account in court pending the hearing and determination of the intended appeal.
9. That the respondents/claimants have obtained a decree of the court issued on 8/6/2023 and the applicant is apprehensive that they would execute against it despite the aforesaid history. The applicant is ready and willing to furnish security for the due performance of the decree.
10. The respondents/claimants filed replying affidavit to the application in which they purport to repudiate the consent by the parties dated 18th December 2020 which was adopted as an order of the court on 27/01/2021.
11. The court is loathe to be engaged in a wasteful exercise which is eating into its precious time to deal with other deserving matters.
12. The court has considered the application, the replying affidavit by the respondents/claimants, the supplementary affidavit of the applicant and the submissions by the parties and at the outset finds that provided the consent order of the court dated 27/01/2021 in which the parties agreed to stay execution of the judgment of the court on conditions and terms set out in the said consent, is in place, the parties are bound by it. This court lacks jurisdiction to revisit the matter except on the known strict principles of setting aside a consent order.
13. Accordingly, the respondents/claimants herein are bound to abide by the terms of that consent order.
14. Therefore having considered the reasons why the terms of the consent have not been fulfilled to date, the court reviews the timelines within which to comply with the consent order dated 18th December 2020 as follows:-

The applicant to deposit the decretal amount in a joint interest earning account at a mutually agreeable commercial bank in the name of the applicant and the 1st and 2nd respondents/claimants advocates within 30 days of this order.



15. In the event, the respondents/claimants fail to comply with the order of the court above as they have been shown to have done, stay of execution of the award delivered on the 20/01/2020 herein and any consequent decree to issue forthwith upon expiry of the 30 days period pending the hearing and determination of appeal.

DATED AT NAIROBI THIS 18TH DAY OF APRIL, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Kimani for respondent/applicant

Ms. Kubai for claimants/respondent.

Mr. Kemboi, Court Assistant

