



**Ali v Grain Industries Limited (Cause 3 of 2020)
[2024] KEELRC 1373 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1373 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 3 OF 2020**

**AK NZEI, J
JUNE 6, 2024**

BETWEEN

ISMAIL AHMED ALI CLAIMANT

AND

GRAIN INDUSTRIES LIMITED RESPONDENT

RULING

1. On 13th July 2023, this Court delivered a Ruling in the suit herein and stated, inter-alia, as follows:-

“15. It is clear from the foregoing that the Notice of Appeal filed by the Respondent/Applicant on 26/5/2022 and endorsed by this Court’s Deputy Registry on 27/5/2022 DOES NOT relate to this Court’s Judgment delivered by Honourable Justice Bryram Ongaya on 13th May 2022. The intended appeal is shown to be against “a Ruling delivered on 13th May 2020,” while this Court’s judgment was delivered on 13th May 2022.

16. I do agree with the Claimant that the Respondent did not, and has not filed a Notice of Appeal against this Court’s judgment delivered on 13/5/2022. There is nothing upon which an application for stay of execution of this Court’s decree pending appeal can be founded. The Notice of Motion dated 27/1/2023 is without basis, and I order that the same be, and is hereby dismissed. The interim stay orders given by this Court on 27/1/2023 are hereby vacated.”

2. On 17/7/2023, the Claimant filed an evenly dated Notice of Motion seeking the following orders:-

a. that the amount of kshs. 3,438,491 that was deposited in Court in Mombasa Employment and Labour Relations Court Cause No 3 of 2020 by the Respondent on 10th February 2023



as security for the decretal amount herein be released to the firm of Jengo Associates forthwith vide their Client Account being Guaranty Trust Bank (K) Ltd, Jengo Associates – Client Account No. 2150029545, Mombasa Branch.

- b. Costs.
3. The application is based on the supporting affidavit of Macmillian E. Jengo Advocate sworn on 17/7/2023. It is deponed in the said affidavit:-
 - a. that this Court delivered its judgment on 13/5/2022 and that aggrieved by the said judgment, the Respondent filed a Notice of Appeal dated 27/5/2022 and subsequently filed an application dated 27/1/2023 seeking a stay of execution pending appeal.
 - b. that the application was, in the first instance, heard by the duty Court ex-parte, and an interim order was issued on 27/1/2023 staying execution on condition that the Respondent deposited the entire decretal amount in Court and paid the Auctioneers' charges within 14 days of the order.
 - c. that the Respondent deposited the decretal sum, being ksh. 3,438,492 in Court on 10/2/2023 as security.
 - d. that the application was canvassed by both parties and this Court delivered a Ruling on 13/7/2023, dismissing the application and vacating the interim stay of execution orders.
 - e. that the application having been dismissed, and there being no stay of execution in the matter, it is necessary that the kshs. 3,438,491 deposited in Court be released to the Claimant through his Advocates.
 4. The application is opposed by the Respondent vide a replying affidavit of Mohammed Nabil Advocate sworn on 22/9/2023 and evenly dated grounds of opposition and preliminary objection. The creed of the said documents of opposition is:-
 - a. that the application seeks to execute a non-existent and/or a defective decree that does not conform to the judgment of 13/5/2022 in that the judgment awarded kshs. 2,556,935.50 and not the kshs. 2,808,871 indicated in the warrants and that the judgment awarded interest (as) from 1/7/2022 and not 13/5/2022 as indicated in the warrants.
 - b. that the interest of ksh. 224,709.68 and costs of kshs. 402,661 claimed in the purported decree is unlawful because it is based on the kshs. 2,808,871 and not the actual kshs. 2,556,935.50 awarded in the judgment.
 - c. the purported decree does not cater for, or deduct the statutory deductions ordered in the judgment.
 - d. that there is a pending Civil Appeal No. E043 of 2023 challenging the judgment dated 13/5/2023 and a pending Civil Application being No. E083 of 2023 seeking stay of execution. That the deposited sum of kshs. 3,438,491 forms the basis of the stay application before the Court of Appeal.
 - e. that the Respondent will be prejudiced if the deposited sum is released as the Claimant is jobless and will not be able to refund the deposited sum if the appeal succeeds.
 5. Both parties filed written submissions for and against the application pursuant to the Court's directions in that regard, which I have considered. It is to be noted that this Court, having heard the suit herein and delivered its judgment on 13/5/2022 (Byram Ongaya, J); and having subsequently



considered and dismissed an application for stay of execution of its decree pending appeal, the Court has completed its tasks on the suit herein. Execution process must be completed. The Respondent/Judgment debtor has not placed before this Court an order of stay of execution of the Court's decree issued by a higher Court. As stated by this Court in its Ruling delivered on 13/7/2023, the Respondent never demonstrated that it had filed a Notice of Appeal against this Court's decree/judgment passed on 13/5/2022.

6. This Court having considered and dismissed the application on the basis of which conditional interim stay orders had been issued, the decretal sum deposited in Court pursuant to the now vacated interim orders of stay of execution ought to be released to the claimant, through his Advocates on record, subject to accuracy of the decree issued pursuant to this Court's judgment delivered on 13/5/2023 (Byram Ongaya, J).
7. Consequently, I allow the Notice of Motion dated 17/7/2024 in the following terms:-
 - a. Both parties herein and/or their respective Counsel shall appear before this Court's Deputy Registrar within 21 days for purposes of addressing the Deputy Registrar on extraction of a decree that conforms to the Court's judgment delivered on 13/5/2022, costs of the suit as taxed and certified, interest so far accrued and the total decretal sum payable to the Claimant/Applicant. The Deputy Registrar shall then extract, sign, seal and deliver to the parties a correctly extracted decree.
 - b. The total decretal sum as correctly decreed shall be released to the Claimant from the sum deposited in Court by the Respondent on 10/2/2023, through his Advocates on record herein vide bank particulars to be furnished to the Deputy Registrar by the Claimant's Advocates on record. Any remainder of the sum deposited in Court on 10/2/2023 shall, after satisfaction of the decree herein, be released to the Respondent and/or its Advocates on record herein.
 - c. Each party shall bear its own costs of the application.
 - d. Mention before the Deputy Registrar on 18/6/2024.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6TH JUNE 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:

.....Claimant

.....Respondent

