



**Mbwabi (As the Legal Representative of Paul Mbwabi - Deceased) v Liguyani
(Cause 63 of 2016) [2023] KEELRC 507 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 507 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 63 OF 2016
S RADIDO, J
MARCH 1, 2023**

BETWEEN

**SILAS ASHIHUNDU MBWABI (AS THE LEGAL REPRESENTATIVE OF PAUL
MBWABI, DECEASED) CLAIMANT**

AND

SAMUEL MUHATI LIGUYANI RESPONDENT

RULING

1. On June 15, 2021, the Court of Appeal granted leave to Samuel Muhati Liguyani (the respondent) to appeal against the judgment of the court delivered on April 16, 2020.
2. The Court of Appeal also ordered the respondent to pay Silas Ashihundu Mbwabi (the instant applicant) Kshs 20,000/- costs within 14 days.
3. The respondent did not pay the costs and on August 17, 2022, the applicant moved this court seeking orders:
 - (1) That costs in the sum of *Ks/bs* 20,000/- awarded to the claimant as against the respondent by the Court of Appeal at Kisumu in Civil Application No E076 of 2021, be realised by way of an order directing Equity Bank Ltd (the garnishee herein) to deduct the said sum of Kshs 20,000/- from the already frozen bank account number XXX of Samuel Muhati Liguyani (the respondent/judgment debtor herein) and pay it to the claimant through the firm of Balusi & Smart Advocates as advocates on record for the claimant.
 - (2) That upon the garnishee deducting and paying the said sum of Kshs 20,000/- to the claimant as ordered above, the balance in the said bank account number XXX of Samuel Muhati Liguyani (the respondent/judgment debtor herein) to remain frozen pending further orders of this honourable court.



- (3) That the costs of this execution application be provided for.
4. The court directed the applicant to serve the application and arguments were taken on January 24, 2023. The parties made oral submissions.
 5. The court has considered the application, supporting affidavit and oral submissions and come to the view that the application has no merit for two reasons.
 6. First, the court delivered a ruling on May 25, 2021 directing Equity Bank Ltd to pay the applicant Kshs 942,613. 90 from the respondent's account, and further that the balance of the decretal sum be deposited into an interest-earning account in the names of the advocates on record.
 7. If the orders were complied with, then it means that the garnishee orders have been overtaken by events.
 8. However, if the orders were not complied with, then the blame must lie squarely at the feet of the advocates (there is material on record suggesting the advocates did not cooperate in the opening of the joint bank account).
 9. Lastly, this court is not seized with powers to enforce costs orders issued by the Court of Appeal. The applicant ought to have moved the Court of Appeal for appropriate orders considering that it is a condition set by that court which had not been met by the respondent.
 10. This court notes that the Court of Appeal had directed the respondent to file a notice of appeal within 14 days of June 15, 2021, but a notice of appeal was only lodged with the court on July 27, 2022.
 11. Before concluding, the court reiterates that the order extracted out of the proceedings of December 5, 2022 purporting to direct the garnishee to pay the firm of Balusi & Smart Advocates the sum of Kshs 1,107,572. 90 does not reflect the orders made by the court on that particular date.
 12. This court did not issue any such order and the order as extracted is, therefore, invalid.
 13. The court further reiterates and draws the attention of the parties to the orders issued on May 25, 2021, which directed how the amounts kept by the garnishee on the account of the respondent were to be dealt with. These orders have not been reviewed or set aside.
 14. The motion dated August 5, 2022 is dismissed. Costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF MARCH 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Balusi & Smart Advocates

For respondent Omondi, Abande & Co Advocates

Court Assistant Chrispo Aura

