



**Mokono v Mills Industries Limited (Cause 1778 of 2015)
[2023] KEELRC 1419 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1419 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1778 OF 2015
NZIOKI WA MAKAU, J
MAY 17, 2023**

BETWEEN

GEORGE MORARA MOKONO CLAIMANT

AND

MILLS INDUSTRIES LIMITED RESPONDENT

RULING

1. The Claimant/Applicant, in his Notice of Motion Application seeks review or correction of Order No 2 of this Honourable Court's Orders given on April 28, 2022 to provide that the sum of money deposited in court be released to or through the Claimant's Advocates, Namada & Co Advocates, instead of the Claimant as given by the Court. In addition, that costs be in the cause.
2. The Motion was premised on the grounds that the reading of the Court Order by the Registrar and the Accounts Department has been that the decretal funds be released directly to the Claimant in person instead of through their Advocates as is the norm. That the decretal sum includes costs, expenses and fees incurred by the Advocates that must be recovered upfront and the balance remitted to the Claimant. According to the Applicant, the review is meant to provide the normal process vide which client funds are paid upon judgment through their Advocates and that no prejudice will be suffered by any party for the same. The Application was also supported by the Affidavit of the Applicant's Advocate, Namada Simoni.
3. The Claimant/Applicant submits that section 16 of the *Employment and Labour Relations Court Act* vests this Court with the jurisdiction to "review its judgments, awards, orders or decrees". That Rule 33(1) of the *Employment and Labour Relations Court (Procedure) Rules 2016* sets out the purview of the review jurisdiction and provides as follows:



- (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
 - (a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
 - (b) on account of some mistake or error apparent on the face of the record;
 - (c) if the judgment or ruling requires clarification; or
 - (d) for any other sufficient reason. (emphasis by Applicant)
4. According to the Claimant/Applicant, his basis for review is Rule 33(1) (c) and (d), for the need for clarification on the aforementioned Order of this Court. That the Claimant's Advocate being his appointed agent in law as the Decree Holder, all payments and proceeds of the suit ought to be channelled through the Advocate. They rely on the case of *Kenya Bus Service Ltd v Susan Muteti* [1996] eKLR wherein the Court stated in material part that an Advocate is generally authorized to act as his client's agent in all matters not falling within an exception which may be reasonably be expected to arise for decision in the course of the proceedings. That this point is buttressed by Order 9 Rule 5 of the *Civil Procedure Rules 2010* that an Advocate shall be considered the Advocate of the party until final conclusion of the matter, including receiving the decretal sum or proceeds of settlement.
5. The Applicant further submits that when a matter is concluded either through amicable settlement or decree by a Court, the proceeds of the settlement or decree ought to be remitted to the Advocate for purposes of taking accounts and release of the decretal sum net of the Advocates costs. That the Advocate therefore has professional lien over the decretal sum, as was the position in the case of *Bill Baba Owuor v National Bank of Kenya* [2022] eKLR. The Applicant thus urges this Honourable Court to allow the application as prayed having satisfied the threshold for grant of review orders.
6. The Respondent neither filed a response nor submissions to the Application.
7. For the release of money owed to the Claimant, the Court directed that the funds be released to the Claimant. The Claimant/Applicant's advocate wishes to have the funds released to them instead of directly to the Claimant as the order indicates. This is because of the lien on fees the Advocate asserts. I have reviewed the Ruling made on April 28, 2022. It was intended that the funds be released in the normal course and having deposited the sum in Court to meet the decretal sum due to the Claimant, absent any objection, and there is none, the funds can be released to the firm of Namada & Co Advocates for onward transmission to the Claimant. Order No 2 is thus accordingly amended to reflect the name of Namada & Co Advocates in place of the Claimant where that appears in Order No 2. There shall be no order as to costs in regard to this application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MAY 2023

Nzioki wa Makau

JUDGE

