



**Kiptanui v Wevarsity Sacco Society Ltd (Cause 111 of 2019)
[2023] KEELRC 2877 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2877 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 111 OF 2019
S RADIDO, J
NOVEMBER 15, 2023**

BETWEEN

VICTOR KIPTANUI CLAIMANT

AND

WEVARSITY SACCO SOCIETY LTD RESPONDENT

RULING

1. In a judgment delivered on 31 May 2023, the Court found that the Respondent had unfairly terminated the Claimant's employment and awarded him compensation of Kshs 467,264/-. The Claimant later got his costs taxed at Kshs 345,400/-.
2. On 29 June 2023, the Respondent filed a Motion under a certificate of urgency seeking stay of execution on the primary ground that it had paid the entire decretal sum of Kshs 812,664/- into the Claimant's account held with it on 12 June 2023, but he had declined to acknowledge payment and had decided to execute.
3. The Claimant filed a replying affidavit on 17 July 2023.
4. The Claimant did not deny in the replying affidavit holding an account with the Respondent but rather that he did not maintain any account with the Respondent after leaving employment, and that he had not instructed the Respondent to pay the decretal into the bank account and that the payment should have been made to and through his advocates on record.
5. The Respondent filed a further affidavit on 25 July 2023 reiterating the previous depositions.
6. The Court has considered the Motion, affidavits and record.
7. It turns out that this legal battle was occasioned by the fact that the Respondent opted to utilise the decretal due to the Claimant to settle an outstanding loan balance with the Respondent in an account in the name of the Claimant.



8. Despite asserting that he no longer maintained the account after separating with the Respondent, the Claimant did not produce evidence that he had settled the loan, or any formal instructions to the Respondent to close the account. There was no evidence that the account would be closed upon the Claimant leaving the Respondent's employment.
9. The Claimant was seeking an exercise of the Court's discretionary powers. He should have approached the Court with clean hands and disclosed that he had an outstanding loan with the Respondent. He did not and equity cannot look favourably upon his case.
10. This Court is satisfied that the Respondent settled the decretal sum awarded the Claimant, inclusive of costs.

Conclusion and Orders

11. The Motion dated 26 June 2023 is allowed.
12. The Respondent to have costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISII ON THIS 15TH DAY OF NOVEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Bruce Odeny & Co. Advocates

For Respondent Abok Odhiambo & Co. Advocates

Court Assistant Chrispo Aura

