



**Kamau v Kanya Union of Post Primary Education Teachers (KUPPET)  
& 4 others; Teachers Service Commission (Interested Party) (Cause  
980 of 2012) [2022] KEELRC 1700 (KLR) (6 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1700 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 980 OF 2012  
MA ONYANGO, J  
MAY 6, 2022**

**BETWEEN**

**PETER MWAURA KAMAU ..... DECREE HOLDER**

**AND**

**KANYA UNION OF POST PRIMARY EDUCATION TEACHERS  
(KUPPET) ..... 1<sup>ST</sup> RESPONDENT  
SECRETARY GENERAL, KUPPET ..... 2<sup>ND</sup> RESPONDENT  
NATIONAL CHAIRMAN KUPPET ..... 3<sup>RD</sup> RESPONDENT  
NATIONAL TREASURER, KUPPET ..... 4<sup>TH</sup> RESPONDENT  
THE REGISTRAR OF TRADE UNIONS ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**TEACHERS SERVICE COMMISSION ..... INTERESTED PARTY**

**RULING**

1. There are two applications before me for determination. The first is dated 21<sup>st</sup> October and the second dated January 12, 2022. Both applications are filed by the judgment debtor herein, Kenya Union of Post Primary Education Teachers (KUPPET).
2. The first application dated October 21, 2021 seeks the following orders:
  - i. Spent.
  - ii. That the firm of Triple A Advocates be granted leave to come on record for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents post judgment in place of Ashitiva Advocates LLP.



- iii. That this Honourable Court do issue a stay of execution of the Judgment entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents on July 24, 2020 together with the Decrees, all consequential Orders arising therefrom, including the Orders issued against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents dated September 29, 2021 and Warrants of Attachment and Sale pending the hearing and determination of this Application.
  - iv. That this Honourable Court do set aside the Judgment entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents on July 24, 2020 together with the Decrees, all consequential Orders arising therefrom, including the Orders issued on September 29, 2021 and Warrants of Attachment and Sale against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
  - v. That this Honourable Court be pleased to re-open the applicants' motion dated June 29, 2021 for de novo hearing on a priority basis and grant the applicants an opportunity to be heard on merit.
  - vi. That this Honourable Court be pleased to grant any other temporary reliefs as it deems fit and just for the ends of justice to be met.
  - vii. That the costs of this Application be in the cause.
3. The grounds in support of the application dated October 21, 2021 are that:
- a. That the Proclamation Notice issued by Bemac Auctioneers has lapsed.
  - b. That the Union's operations are paralyzed.
  - c. That if the Judgment is executed, the applicants will suffer irreparable loss, will occasion grave injustice and deny them the right to be heard, and the right to property contrary to the dictates of natural justice and their constitutional rights.
  - d. That the applicants are ready and willing to proceed with this matter to its logical conclusion and it is in the interest of justice that the prayers sought in the annexed application are granted as prayed.
  - e. That this Honourable Court has unfettered discretion to grant the prayers sought.
4. The application is further supported by the affidavit of Akelo M. T. Misori, the Secretary General of the Applicant in which he deposes among other matters, that the Applicant is already and willing not pay the correct amount the decretal sum but it is wrongly tabulated.
5. That the applicant wishes to correct this and prove to the Court the correct amount payable.
6. The second application dated January 12, 2022 seeks the following orders:
- i. Spent.
  - ii. That this Honourable Court do issue a stay of execution of the Order and the Warrants of Attachment dated December 16, 2021 entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents together with all consequential Orders arising therefrom pending the hearing and determination of this Application.
  - iii. That this Honourable Court do issue a stay of execution of the Order and the Warrants of Attachment dated December 16, 2021 entered against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents together with all consequential Orders arising therefrom pending the Ruling on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>



and 4<sup>th</sup> respondents' Applications dated June 29, 2021 and October 21, 2021 that is scheduled to be delivered on February 11, 2022.

- iv. That the Decree issued on May 31, 2021 entered for the claimant against the 1<sup>st</sup> respondent in the sum of KES 9,892,722.90 be amended to reflect the principal decretal sum of KES 1,768,261 and consequential interest as granted thereupon.
  - v. That this Honourable Court be pleased to grant any other temporary and/or other reliefs as it deems fit and just for the ends of justice to be met.
  - vi. That the costs of this Application be in the cause.
7. The claimant/decreed Holder opposes both application through his notice of preliminary objection dated February 9, 2022 and replying affidavit sworn on November 16, 2021 sworn by Peter Mwaura Kamau, the decreed holder.
  8. Directions were issued that both applications be heard together and that the same be disposed of by way of written submissions.
  9. The application dated January 12, 2022 is supported by the affidavit of Jacqueline Lorraine Akello.
  10. The claimant/decreed Holder opposes the application and filed both a notice of preliminary objection and replying affidavit.
  11. In the notice of preliminary objection, the claimant raises the following grounds of objection:
    - i. The 1<sup>st</sup> - 4<sup>th</sup> Respondents' applications dated October 21, 2021 and 12/1/2022 as filed and canvassed are fatally and incurably defective in law and as such they cannot stand and/or be ventilated before this Honourable Court.
    - ii. This Honourable Court dismissed the 1<sup>st</sup> - 4<sup>th</sup> Respondents' application dated 29/6/2021 filed under sections 3, 12 and 16 of the *Employment and Labour Relations Court Act*, 2011 and rules 33, 34 and 35 of the *Employment and Labour Relations Court (Procedure) Rules 2016* on 27/9/2021. The application sought to review the ruling delivered by this Honourable Court on 13/5/2021 and the consequent Decree issued on 31/5/2021.
    - iii. The 1<sup>st</sup> - 4<sup>th</sup> Respondent's application dated 12/1/2022 is defective in law because rule 33 (6) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 bar the subsection of an order made for a review to be subjected to further review.
    - iv. Under section 12 of the *Employment and Labour Relations Court Act*, 2011, this Honourable Court lacks jurisdiction to set aside the judgment delivered on 24/7/2020 as sought in the 1<sup>st</sup> - 4<sup>th</sup> Respondents' application dated 21/10/2021.
    - v. Further, under rule 33 (5) of the *Employment and Labour Relations Court (Procedure) Rules* 2016 this Honourable Court can only quash its decision and order that the suit is heard again if an application for review is granted.
    - vi. The 1<sup>st</sup> - 4<sup>th</sup> respondents multiple applications seeking review of the orders issued on 13/5/2021 after their application for review was dismissed are a violation of Section 3 (3) of the *Employment and Labour Relations Court Act*, 2011 and rule 33 (6) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016. They are an abuse of the court process and should be dismissed.



12. In the replying affidavit sworn on November 16, 2021, the Decree Holder sets out the history of this matter, alleging that the respondents have at every stage deliberately set out to delay the conclusion of this matter which was filed in 2011.
13. The Decree Holder deposes that the application does not disclose any new and important matter in evidence, mistake of error apparent on the face of the record or any sufficient reason to warrant the review of the judgment delivered on July 24, 2020 or ruling delivered on September 27, 2021.
14. The second application has not been argued. On January 14, 2022 when the application came up before the Duty Judge Ocharo Kebira J., he issued a temporary injunction to last till February 11, 2022 and fixed the application for mention for directions before the Trial Judge on February 11, 2022.
15. From the Court record, the parties were not heard on February 11, 2022 and the applicant has not made any attempts to fix the application for hearing or even to extend the orders granted on 14<sup>th</sup> January 2022. Needless to state so, the said orders lapsed on February 14, 2022.
16. I have considered the prayers in the two applications and the submissions made before the Court orally on November 29, 2021 in respect of the application dated October 21, 2021.
17. The application dated October 21, 2021 is filed by Triple A Advocates on behalf of the 1<sup>st</sup> to 4<sup>th</sup> respondents. The record does not show that the application was served upon Ashitiva Advocates who were on record for the said Respondents at the time of judgment.
18. Among the prayers for consideration by the Court in the application is for leave for Triple A Advocates to come on record for the 1<sup>st</sup> to 4<sup>th</sup> respondents in place of Ashitiva Advocates LLP. There is no consent by the said firm authorizing Triple A Advocates to come on record for the said Respondents.
19. On November 29, 2021 when arguing the application dated October 21, 2021, Ms. Akello for the Applicants did not mention the issue of admission of the firm of Triple A Advocates to come on record. She only dwelt on the wrong tabulations of the decretal sum.
20. Even though the court has wide powers to grant prayers in matters pleaded even when the parties have not argued the same if the issue is not contested, in cases of change of advocates after judgment, the [\*Civil Procedure Act\*](#) is clear that such authority must be given by the court.
21. In [\*John Langat v Kipkemoi Terer & 2 others\*](#) [2013] eKLR Muchelule J. observed as follows: -

“There was no application made to change advocates. In the replying affidavit, the appellant swore that there was a consent entered into between his previous advocates and his present advocate to effect change. This was done following the judgement. He annexed the consent. There is no evidence that the respondents were put in the picture. But more important, the consent could not effect the change of advocates “without an order of the court.” No such order was sought or obtained. It follows, and I agree with Mr. Theuri and Mr. Nyamweya, that Anyoka & Associates are not properly on record for the appellant, and therefore the appeal and the application are incompetent.”
22. The same position is found in [\*Florence Hare Mkaba v Pwani Tawakal Mini Coach & another\*](#) [2014] eKLR; wherein Kasango, J. held that:

“The question is; was the execution validly carried out on behalf of the plaintiff? There are glaring anomalies in respect of the representation of the plaintiff. As clearly set out above the plaintiff was represented by Pandya & Talati Advocate up and until judgment was entered



in her favour on 31<sup>st</sup> July 2012. Once judgment was entered the provisions of Order 9 Rule 9 had to be complied with if the plaintiff required to change the advocates representing her. This was not the case. She was variously represented by Shikely Advocate, who filed the submissions in support of the plaintiff's Bill of Costs, and was represented by Kinyua Njagi & Co. Advocates through the execution of the decree stage. In both those occasions the two advocates did not obtain an order of the court to take over the conduct of plaintiff's case. Much more Shikely Advocate was not properly on record to enable him consent for Kinyua Njagi & Co. Advocates to conduct the plaintiff's case."

23. In the application dated January 12, 2022 there is no prayer for the said firm of Triple A. Advocates to come on record for the 1<sup>st</sup> to 4<sup>th</sup> respondents/applicants.
24. The two applications before me are thus filed by a stranger and are incurably defective.
25. Having reached this finding, it is not necessary to address the prayers in the applications substantively.
26. The applications dated October 21, 2021 and January 12, 2022 are hereby struck out with costs for failure to comply with Order 9 Rule 9 on change of advocates after judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6<sup>TH</sup> DAY OF MAY 2022**

**MAUREEN ONYANGO**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**

