



REPUBLIC OF KENYA



**Mwangi v Ernest Muibu Kiarie t/a Avenue Suites Hotel (Cause  
145 of 2018) [2022] KEELRC 1782 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1782 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 145 OF 2018  
DN NDERITU, J  
JULY 28, 2022**

**BETWEEN**

**TERESIA MUTHONI MWANGI ..... CLAIMANT**

**AND**

**ERNEST MUIBU KIARIE T/A AVENUE SUITES HOTEL ..... RESPONDENT**

**RULING**

1. In a Notice of Motion dated 26<sup>th</sup> January, 2022 filed under Certificate of urgency the Respondent (Applicant) prays for:-
  1. Spent
  2. Spent
  3. That the Respondent/Applicant be allowed to offset the judgment debt amount of Kshs.575,178/= and costs of the suit by depositing with the Claimants advocates monthly installments of Kshs.30,000 (Thirty Thousand Shillings Only) until payment in full.
  4. That the costs of this application be in the cause.\*\*
2. The said application is expressed to be brought pursuant to Article 15 of *the Constitution*, Order 51 Rule 1 and Order 22 Rule 52 of the *Civil Procedure Rules*, and Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and all other enabling provisions of the law.
3. The application is based on the grounds on the face of the application and it is supported by the affidavit of Doris Lugalia, the manager of the Respondent/Applicant, sworn on 26<sup>th</sup> January, 2022 with several annexures thereto.
4. The application is opposed by the Claimant by way of Grounds of opposition dated 18<sup>th</sup> March, 2022 filed by her Counsel and her replying affidavit sworn on 18<sup>th</sup> March, 2022.



5. Basically, the Applicant is seeking for two main orders. One, that stay of execution pending the hearing and determination of the application be issued, and two, that the Respondent be allowed to settle/offset the decretal sum of Kshs.575,178/= plus costs, by way of monthly instalments of Kshs.30,000/= till payment in full.
6. The application by the Applicant was filed in court on 27<sup>th</sup> January, 2022. On 31<sup>st</sup> January, 2022 the Claimant filed a Notice of Motion dated 27<sup>th</sup> January, 2022 under a certificate of urgency seeking to review the judgment of the court (Wasilwa J) delivered on 7<sup>th</sup> December, 2021. The review sought for relates to rectification of the amount that was awarded in the said judgment. The Claimant alleges that there is an error apparent on the face of record as the correct amount of the award ought to be Kshs.738,978/= and not Kshs.575,178/=.
7. When the matter (for both application) came up in court on 21<sup>st</sup> February, 2022 Miss Awuor for the Respondent informed the court that the Respondent was not opposed to the application by the Claimant, the Notice of Motion dated 27<sup>th</sup> January, 2022 seeking for review of the judgment to indicate the correct amount awarded in the judgment to be Kshs.738,938/= instead of Kshs.578,178/=. This court directed both Counsel to file an appropriate written consent in court.
8. As it turns out, as at the time of writing this ruling there is no consent in the court file on the correct award amount that ought to have been indicated in the judgment as the correct award.
9. Until Counsel for the Respondent/Applicant indicated that the Respondent was not opposed to the Claimant's Notice of Motion dated 27<sup>th</sup> January, 2022 this court had directed that this application was to take precedent in order of hearing over the application by the Respondent dated 26<sup>th</sup> January, 2022 which is the subject matter of this ruling.
10. From the court record, costs in this cause have not been assessed and a decree has not been drawn.
11. Even without going into the merits or demerits of the application by the Respondent/Applicant dated 26<sup>th</sup> January, 2022 it is evidently clear that the same is premature. The correct amount that ought to have been awarded in the judgment has not been agreed upon. How then can this court determine whether the proposed instalments on settlement are reasonable?
12. In the circumstances, and for the reasons stated above, the Notice of Motion dated 27<sup>th</sup> January, 2022 by the Respondent/Applicant is hereby struck out for being premature as the award amount, which should be the subject of the stay of execution and the proposed settlement by instalments, has not been agreed upon or reviewed by the court.
13. There is no order as to costs.
14. In regard to Claimant's Notice of motion dated 27<sup>th</sup> January, 2022 Counsel for both parties are directed to file the proposed consent or fix the said application for hearing within 14 days of the date hereof.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH .DAY OF JULY 2022.**

.....

**DAVID NDERITU**

**JUDGE**

