



**Nduu v Jayveer Enterprises Limited (Cause 1957 of 2012)
[2022] KEELRC 1199 (KLR) (4 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1199 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1957 OF 2012
MA ONYANGO, J
JULY 4, 2022**

BETWEEN

ERICK MUTHAMA NDUU CLAIMANT

AND

JAYVEER ENTERPRISES LIMITED RESPONDENT

RULING

1. Judgment in this suit was delivered on February 10, 2017 by Justice Abuodha J. N. The claimant's advocates thereafter took out execution proceedings and realised a sum of Kshs.538,550.00. The claimant's counsel partly paid the claimant and recovered fees from the decretal amount leaving an amount of Kshs.250,000.00 to the credit of the claimant.
2. It would appear that there was a disagreement over the disbursement of the said sum to the claimant. Counsel for the claimant, Ms. Kinyua Musyoki and Company Advocates allege that the claimant failed to attend their offices to collect the money while the claimant alleges that the said advocates have failed and/or refused to release the said monies to him.
3. The claimant subsequently filed a complaint at DCIO Matinyani accusing the Advocates of stealing by agent. The DCIO Matinyani wrote to the said advocates inviting them to report to the SCCIO Matinyani on April 26, 2021 at 1000 hours to shed more light on the matter.
4. On June 14, 2021, Kinyua Musyoki and Company Advocates filed the instant application in which it seeks the following orders:
 - (i) That the application herein be certified urgent and disposed of expeditiously.
 - (ii) That the claimant's advocates Ms. Kinyua Musyoki and Company Advocates, be allowed to deposit in court the total sum of Kshs.250,000.00 to be held on account of the claimant.



- (iii) That the costs of this application be awarded to the claimant's advocates.
5. The grounds in support of the application are that:
- (a) That following the conclusion of the matter herein, the claimant's advocates took out execution proceedings and realized a total sum of Kshs.538,550.00
 - (b) That accounts were rendered to the claimant but he has declined to attend his advocate's offices to collect payment.
 - (c) That it is in the interest of justice that the orders sought be granted.
6. Upon being served with the application, the claimant instructed Mwinzi and Associates Advocates who first filed a notice of change of advocates on November 12, 2021 which was later withdrawn by notice of withdrawal dated February 21, 2022. Mwinzi and Associates Advocates on the said date, that is February 21, 2022, filed an application by way of notice of motion seeking the following orders:
- (i) That the firm of Mwinzi & Associates Advocates be granted leave to formerly come on record as Advocates for the claimant/applicant herein in place of Ms. Kinyua Musyoki & Co. Advocates.
 - (ii) That the Notice of Change of Advocates annexed herein be deemed as duly filed and served.
 - (iii) That the draft replying affidavit herein attached be deemed as duly filed and served.
 - (iv) That costs of this Application be provided for.
7. From the two applications, it is clear that there is a common understanding that there are funds for the Claimant in the hands of Kinyua Musyoki and Company Advocates which the said advocates wish to pay to the Claimant who also desires to be paid the said amount.
8. It is unfortunate that the matter had to be resolved by the filing of applications by both parties when in actual fact there appears to be no dispute over the same.
9. I accordingly order that the firm of Kinyua Musyoki and Company Advocates do within seven (7) days from today, issue a banker's cheque of Kshs.250,000/- to the firm of Mwinzi and Associates for onward transmission to the claimant. the said sum is to be paid the claimant in full by Mwinzi and Associates within 14 days of receipt thereof.
10. The fees payable to Mwinzi and Associates by the claimant is to be borne by Kinyua Musyoki and Company Advocates on the basis of the Advocate/Client bill. This is because had the said advocates released the decretal sum to the claimant as and when it was received, there would have been no need for the two applications before the court. The money payable to the claimant would also have earned quite a bit of interest had it been invested at the time of receipt by Kinyua Musyoki and Company Advocates, which benefit the claimant has lost due to the failure of the said advocates to either release the money to him or invest the same.
11. The application by the firm of Kinyua Musyoki has no basis and borders on abuse of court process. The same is dismissed with costs.
12. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 4TH DAY OF JULY
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 March 15, 2020 and subsequent directions of April 21, 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

