



REPUBLIC OF KENYA



KENYA LAW
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**Osieko & 2 others v Ooko & 2 others (Petition E25 of 2021)
[2022] KEELRC 12935 (KLR) (19 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12935 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E25 OF 2021
S RADIDO, J
OCTOBER 19, 2022**

BETWEEN

**NASHON OLIECH OSIEKO 1ST PETITIONER
RAPHAEL MUYONGA 2ND PETITIONER
IMELDA NUBIA 3RD PETITIONER**

AND

**FRANCIS OOKO 1ST RESPONDENT
HARUN KIRUI 2ND RESPONDENT
MUHORONI SUGAR CO LIMITED (IN RECEIVERSHIP) 3RD RESPONDENT**

RULING

1. On 23 March 2022, the Court declined an application by the Respondents seeking an order staying the judgment/decree of the Court delivered on 1 December 2021.
2. Consequently, upon application of the Petitioners, the Deputy Registrar of the Court issued warrants of arrest against the 1st and 2nd Respondents.
3. Fearing that the warrants would be executed at any time, the Respondents filed a Motion under a certificate of urgency on 18 May 2022 seeking orders:
 - i. ...
 - ii. ...
 - iii. That the warrants of arrest issued on 17th May 2022 against the 1st and 2nd Respondents herein be lifted.



4. The main grounds advanced in support of the Motion were that the Deputy Registrar unilaterally decided on 17 May 2022 to hear the Notice to Show Cause in open Court even though the application was to be heard virtually; that the Deputy Registrar ignored the existence of another application on record dated 14 April 2022 whose outcome would have affected the outcome of the Notice to Show Cause proceedings; that the Petitioners were aware of the pending application but feigned ignorance thereof and that it was in the interest of justice to stay the warrants of arrest.
5. The Petitioners filed Grounds of Opposition to the Motion on 23 May 2022, in which it was contended that the Respondents had not filed any response/affidavit to the Notice to Show Cause by the time it came up on 17 May 2022; that an advocate represented the Respondents during the Notice To Show Cause proceedings before the Deputy Registrar; the Respondents had made no attempt to comply with the judgment/decree and that the Respondents had approached the Court with tainted hands.
6. The Court urged the parties to discuss and attempt to resolve the outstanding issues (no meaningful negotiations were held), and on 24 May 2022, the Court took brief oral submissions from the parties.
7. On 9 June 2022, the Court directed the parties to file and exchange submissions.
8. The submissions were not on record by the agreed timelines.
9. The Court has considered the record, the Motion, the affidavit in support and the Grounds of Opposition.
10. It is not in dispute that the Court delivered a judgment on 1 December 2021. The Respondents were represented by counsel during the delivery of the judgment and thus cannot feign ignorance of what they were expected to do in terms of compliance.
11. Further, the record indicates that the Respondents moved the Court through a Motion dated 15 December 2021, seeking an order staying execution of the judgment/decree. The Court dismissed the application in a Ruling delivered on 23 March 2022.
12. It is also common that after the rejection of the application for a stay of execution, the Respondents moved the Court on 20 April 2022, seeking a review of the judgment. The Motion was scheduled for submissions on 24 May 2022.
13. The record also shows that a Notice to Show Cause was issued on 14 April 2022 with a return date 17 May 2022, and the Notice directed the Respondents to appear in Court in person or by an agent.
14. The record also shows that by the return date, the Respondents had not filed any response or affidavit showing cause and that on the date set for the Notice to Show Cause, the Respondents were represented in Court by an advocate who was physically in Court.
15. The advocate applied to the Deputy Registrar to place the file before the Judge to give directions on the application seeking review. After hearing arguments, the Deputy Registrar disallowed the request and noted that the Respondents had failed to appear in Court to show cause.
16. By the time the Deputy Registrar issued the warrants of arrest against the 1st and 2nd Respondents, the Court had already rendered itself on whether the judgment should be stayed pending appeal and declined the Motion on the merits.
17. The judgment sought to be enforced by the Petitioners through the Notice to Show Cause was a regular judgment made after hearing all the parties.



18. The Respondents had shown an intention to appeal against the judgment and applied for certified copies of proceedings. It is, therefore, doubtful whether the Respondents approached the Court with clean hands considering the provisions of section 80 of the *Civil Procedure Act*.

Conclusion and Orders

19. The Court finds no merit in the Motion dated 17 May 2022, and it is dismissed with costs to the Petitioners.
20. The Officer Commanding Police Station, Koru, is ordered to enforce the warrants of arrest issued on 17 May 2022 against Francis Ooko and Harun Kirui as soon as possible and bring the parties before the Court with dispatch.

DELIVERED VIRTUALLY FROM KWALE, DATED, AND SIGNED ON THIS 19TH DAY OF OCTOBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant N.E. Mogusu & Co. Advocates

For 1st and 2nd Respondents Kale Maina & Bundotich Advocates, LLP

For 3rd Respondent The Federation of Kenya Employers

Court Assistant Chrispo Aura

