



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISCELLANEOUS CIVIL APPLICATION NO. 1 OF 2020

KISII COUNTY GOVERNMENT.....1ST APPLICANT

H.E. JAMES ONGWAE.....2ND APPLICANT

VERSUS

JACKSON MOINDI ONTEGI.....RESPONDENT

RULING

1. The applicants filed application dated 16/7/2020 in which they pray that the Court reviews its ruling delivered on 25/6/2020
2. The application is opposed by grounds of opposition dated 27/11/2020 that the application is fatally defective and is an abuse of Court process.
3. The gist of the application is to have the Court change its orders in the ruling to wit:-
 - (i) The draft notice of Appeal is deemed as duly filed subject to payment of requisite fees and
 - (ii) Stay of execution is granted pending the hearing and determination of appeal on condition that the appellant deposits the decretal sum in a joint interest earning account held by the both Counsel within 30 days failing which the stay of execution shall lapse.
4. This is simply a guised appeal against the ruling of the Court and does not qualify to be an application for review in terms of rule 33(1) (a) to (d) of the Employment and Labour Relations Court (procedure) Rules, 2016.
5. The applicants want to have a second bite of the cherry, by urging the Court to reconsider its own decision. Apparently, the applicants have not complied with the order of the Court contained in paragraph 21(ii) which order is self-executing.
6. With respect to the order contained in paragraph 21(i) it follows that if there is no requisite fee then none is payable and the challenge by the applicant is superfluous.
7. The application lacks merit and is dismissed with costs.

Dated and delivered at Nairobi this 11th day of February 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Kenneth Onsembe & Co. Advocates for the Applicant

Gichaba & Co. Advocates for the respondent

Chrispo: Court clerk.