



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**CAUSE NUMBER 181 OF 2016**

**BETWEEN**

**STEPHEN KABURIA RUTEERE .....CLAIMANT**

**VERSUS**

**1. KENYATTA NATIONAL HOSPITAL BOARD..**

**2. EVANSON KAMURI .....CONTEMNORS/RESPONDENTS**

**RULING**

1. This Ruling relates to two Applications filed by the respective Parties. The first is dated 8<sup>th</sup> December 2020, filed by the Claimant, seeking to enforce Judgment made in his favour on 9<sup>th</sup> April 2020, and a Ruling clarifying that Judgment, made on 23<sup>rd</sup> October 2020. Enforcement is sought by way of contempt of court.
2. The second Application dated 24<sup>th</sup> February 2021, was filed by the Respondents, on 25<sup>th</sup> February 2021. The Respondents seek stay of execution of the Judgment of 9<sup>th</sup> April 2020, and Ruling of 23<sup>rd</sup> October 2020 pending Appeal.
3. The Court summoned the Claimant and the Respondents on 5<sup>th</sup> February 2021, when they were granted a preliminary hearing on contempt.
4. Upon hearing the Parties personally, and through their Advocates preliminarily, the Court granted the Respondents 14 days to comply with the Judgment on record, and scheduled the Application for contempt, for hearing on 26<sup>th</sup> February 2021.
5. On 26<sup>th</sup> February 2021, the matter was listed before this Court for hearing as scheduled, but the file was not placed before this Court.
6. The record shows the file was re-routed to the Principal Judge of this Court, who was the duty Judge, for hearing of the Application for stay of execution filed by the Respondents under Certificate of Urgency.
7. It would have been in the interest of justice, to have the file mentioned before the Court where it was listed, after the Principal Judge had finished issuing her orders. By failing to bring the file before this Court on 26<sup>th</sup> February 2021, a situation was created, leading the Claimant to feel, that the file was deliberately placed before another Court, without his knowledge, to deny him the right to enforce his Judgment. The Court is aware that the Claimant and his Advocate spent considerable time unhappily enquiring about the file, from the registry and the Judge's chambers, which need not have happened, with proper communication on the file movement. When a matter is listed before a particular Court, it should be mentioned before that Court, regardless of supervening events.
8. The Principal Judge granted interim stay of execution, with the direction that the Application is heard before this Court.
9. The file was therefore reverted to this Court on 4<sup>th</sup> March 2021, when the Court directed that the 2 Applications are considered simultaneously, by way of written submissions.
10. The Ruling was reserved for 26<sup>th</sup> March 2021, which turned out to fall within the Court's Easter break. The Court directed its registry to reschedule Ruling for the date appearing at the bottom of the Ruling herein.

**The Court Finds:** -

11. Judgment was delivered a year ago, on 9<sup>th</sup> April 2020, and not 2 years ago, as erroneously stated by this Court, in the proceedings of 4<sup>th</sup> March 2021.

12. It is noted that the Claimant made an initial Application dated 19<sup>th</sup> May 2020, for enforcement through contempt of court mechanism. The Ruling of the Trial Court, dated 23<sup>rd</sup> October 2020, found that the Respondents were not in contempt of court.

13. The Claimant filed a second Application, which is under consideration, alongside the Application filed by the Respondents seeking stay of execution.

14. The Respondents submit that they have lodged Appeal at the Court of Appeal of Kenya, against Judgment and Ruling of this Court.

15. They argue that at the time the Court ordered that the Claimant is reinstated, the period of 3 years from the date of dismissal, prescribed under Section 12[3] [vii], of the E&LRC Act, had expired.

16. They have moved the Court of Appeal, in Civil Application Number NAI E340 OF 2020, for orders of stay of execution. Ruling by the Court of Appeal is scheduled for delivery on 16<sup>th</sup> April 2021.

17. In light of this, the Court is of the view that its proceedings should be frozen, pending the Ruling of the Court of Appeal. The Ruling is only about a week away. It is imprudent to determine the Application for contempt of court at this stage. It may be allowed, and the contemnors placed behind bars, only for the Court of Appeal to find next week, that there is sufficient reason to stay execution of the Ruling and the Judgment.

**IT IS THEREFORE ORDERED: -**

- a. Ruling on contempt of court is deferred to a date to be given after 16<sup>th</sup> April 2021.***
- b. The Respondents are granted temporary stay of execution, pending the Ruling by the Court of Appeal.***
- c. Costs in the cause.***

Dated and signed at Chaka, Nyeri County, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 9<sup>th</sup> day of April 2021

James Rika

Judge