



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 2607 OF 2016**

**WILLIS ODHIAMBO AGAYI.....CLAIMANT**

**VS**

**DAVID NJOGU GACHANJA T/A D. NJOGU & COMPANY ADVOCATES.....RESPONDENT**

**RULING**

1. This ruling flows from the Claimant's Notice of Motion brought under Certificate of Urgency dated 24<sup>th</sup> June 2021 seeking an order for release of the decretal sum of Kshs. 494,134.60 plus interest, deposited as security in Kenya Commercial Bank (KCB) Karen Branch in Account Number [Particulars Withheld] in the joint names of the parties' Advocates.
2. The Motion is supported by an affidavit sworn by the Claimant and is based on the following grounds:
  - a) That the Respondent has not filed any appeal against the judgment of the Court dated 21<sup>st</sup> February 2020;
  - b) That the Respondent's application to file an appeal out of time vide Misc. Application No. E379 of 2020, was dismissed by the Court of Appeal on 18<sup>th</sup> June 2021;
  - c) That the order of stay of execution granted pursuant to consent dated 19<sup>th</sup> August 2020 and filed in court on 24<sup>th</sup> August 2020 has ceased to exist;
  - d) That the consent dated 19<sup>th</sup> August 2020 filed by both parties has been overtaken by events;
  - e) That despite the Claimant's Advocates requesting compliance by the Respondent in regard to release of the decretal sum, no response has been received.
3. The Respondent was duly served with the Motion but chose not to respond.
4. This is a straightforward matter; pursuant to the Respondent's application for stay of execution pending appeal, the parties entered a consent dated 19<sup>th</sup> August 2020, by which the decretal sum was deposited in an interest earning account in the joint names of the parties' Advocates; the Respondent did not lodge his appeal in time and his plea for extension of time was declined by the Court of Appeal in a ruling delivered on 18<sup>th</sup> June 2021.
5. The effect of the foregoing is that there is no appeal and there is therefore no reason why the decretal sum continues to be held.
6. Consequently, I allow the Claimant's Motion and direct that the sum of Kshs. 494,134.60 plus interest, deposited as security in Kenya Commercial Bank (KCB) Karen Branch in Account Number [Particulars Withheld] in the joint names of the parties' Advocates be released to the Claimant, through his Advocates, Chekemboi Milka & Company Advocates.
7. The Respondent will meet the costs of this Motion.
8. It is so ordered.

**DELIVERED VIRTUALLY AT NAIROBI THIS 14<sup>TH</sup> DAY OCTOBER 2021**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Chepkemboi for the Claimant

No appearance for the Respondent