



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAIROBI**

CAUSE NO.1349 OF 2016

EDNA SIMITI.....CLAIMANT

VERSUS

INTEX CONSTRUCTION LIMITED.....RESPONDENT

RULING

The respondent, Inter Construction Limited filed application dated 24th February, 2021 and seeking for orders that;

The respondent/applicant's advocates, M/s Robi Kerato Partners advocates, be granted leave to come on record after judgement.

The court varies the orders issued on 14th January 2021 ... to allow the respondent utilise the funds deposited in the joint interest earning account and comply with orders issued on 11th November, 2020 ... specifically that "the applicant deposits ¹A the decretal sum in an interest earning account held in joint names of Counsels on record within 60 days and releases the remaining to the claimant within the same period.

The court be pleased to enlarge/ extend time for the respondent/applicant to comply with the orders of this court issued on 11th November, 2020.

The application is supported by the affidavit of Samit Gehlot and on the grounds that on 20th January, 2020 judgement was delivered herein in favour of the claimant and aggrieved, the respondent filed application dated 30th June, 2020 seeking stay of execution pending hearing on an intended appeal and by a ruling delivered on 11th November, 2020 the court allowed conditional stay and directed deposit of % the decretal sum in a joint account held by the parties within 60 days.

Aggrieved by this ruling, the respondent filed application dated 11th November, 2020 seeking for a review and or setting aside of the orders of stay of execution whereupon the court directed the respondent to deposit the entire decretal sum in a joint interest earning account within 7 days. The respondent obliged and has since complied.

The application for review was dismissed.

In his affidavit, Samit Gehlot avers that he is the managing director of the respondent and wishes to utilise the funds deposited as directed by this court since despite compliance the claimant has instructed auctioneers to attach its assets resulting in double punishment and unless the orders sought are issued, there shall be prejudice, loss and damage.

In reply, the claimant filed here Replying Affidavit and avers that the orders sought in the instant application are similar to orders sought in application dated 11th January, 2021 which application was heard and dismissed with costs.

The orders sought in application dated 30th June, 2020, 11th January, 2021 and 24th February, 2021 as all similar and relating to stay of execution of the judgement herein; a review of the orders issued on 11th November, 2020 and enlargement of time for compliance with the orders issued on 11th November, 2020. The court ruling on 9th February, 2021 finally determined the issues repeated herein.

The claimant also avers that the respondent has confirmed that there is a deposit of the entire decretal sum in a joint interest earning account in the joint name of counsels and therefore the alleged attachment by the claimant holds no ground and the need for change of advocates does not hold and if the change is allowed, such decretal sum should be released to her to satisfy the decree. The respondent is simply buying time to cause delay in the matter and application should be dismissed with costs.

On the application, affidavit and submissions, the respondent in the affidavit of Samit Gehlot does not address the reasons as to why leave is sought for change of advocates. Substantive orders have issued with far-reaching effects and particularly the orders of 14th January, 2021 and condition too deposit the decretal amount in a joint interest earning account held by both counsels.

For change of advocates at this instance, good cause must exist even where the right to legal representation exists.

The other orders sought relates to *court varies the orders issued on 14th January, 2021* following application dated 11th January, 2021 and which orders were that;

The application dated 11th January, 2021 is certified urgent and fixed for mention for directions on hearing on 26th January, 2021 ...

In the meantime, the applicant to deposit the entire decretal sum in a joint interest earning account within 7 days.

This application, dated 11th January, 2021 has since been heard and ruling delivered on 26th January, 2021. This application related to review and or setting aside of orders issued on 11th November, 2020 on the conditions for stay of execution.

The respondent has since complied and deposited the entire decretal sum. In the Affidavit of Mr Samit at paragraph 8 and 9 he avers that *the application for review was dismissed. The applicant wishes to utilise the funds deposited in the joint interest earning account to comply with the orders of 11th November, 2020.*

Upon confirmation that the conditional stay orders have been complied with as directed on 11th November, 2020 and further directions on 14th January, 2021 the parties are guided. Where there is no appeal filed, there are resulting consequences. And any execution proceedings and or attachment by the claimant on the ensuing orders would be invalid.

The court has rendered itself with regard to the question of stay of execution. The

stay granted was to allow the respondent proceed on the intended appeal.

The court has further addressed itself with regard to review of the orders of stay and further application seeking a review thereof. There is finality on two angles, stay of execution and review thereof.

The purpose for conditional stay of execution clarified, this court stands *functus officio* with regard to review and variation of the orders herein. Further applications seeking review and variation of orders herein is sheer abuse of court process.

Accordingly, application dated 24th February, 2021 is found without merit and is hereby dismissed. by extension application dated 2nd August, 2021 seeking to urge the earlier application is addressed.

Costs to the claimant.

DELIVERED IN COURT AT NAIROBI THIS 7TH DAY OF OCTOBER, 2021.

M. MBARU

JUDGE