



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**MISCELLANEOUS CIVIL APPLICATION NO. 1 OF 2020**

**KISII COUNTY GOVERNMENT..... 1<sup>st</sup> APPLICANT**

**H.E. JAMES ONGWAE ..... 2<sup>nd</sup> APPLICANT**

**v**

**JACKSON MOINDI ONTEGI .....RESPONDENT**

**AND**

**EDNA KEMUNTO OKEYO.....PROPOSED CLAIMANT**

**RULING NO. 2**

1. For determination is a Chamber Summons dated 3 June 2021 by Edna Kemunto Okeyo (proposed party) seeking orders:

(1) ...

(2) THAT pending the hearing of this instant application *inter-partes*, there be a stay of implementation and execution of the judgment herein.

(3) THAT this Honourable Court be pleased to grant leave to the applicant herein to be enjoined to this suit as a 2<sup>nd</sup> Plaintiff.

(4) THAT judgment delivered herein be reviewed to include the Applicant as a judgment creditor in addition to the Plaintiff herein.

(5) THAT the costs of this application be provided for.

2. When the Summons came up for directions on 15 June 2021, the Court directed the parties to file and serve replies and submissions within set timelines.

3. The Respondent filed Grounds of Opposition to the Summons on 23 June 2021 (submissions were not on record by the agreed timelines).

4. The Court has keenly perused the Summons, affidavit in support and the entire file herein and come to the conclusion that the application is not only legally misguided but without merit for the following reasons.

5. First, on 25 June 2020, the Court granted the 2 applicants leave to file an Appeal out of time within 30-days. A conditional stay of execution was also granted on the basis that the applicants deposited the decretal sum in a joint interest-earning account in the names of the advocates on record.

6. With the grant of the orders, this miscellaneous proceedings became extinguished, and there would be no legal basis to join the proposed Claimant to a proceeding that did not survive past the delivery of the Ruling on 25 June 2020.

7. Second, this Court has not delivered any judgment capable of being stayed or reviewed.

8. Indeed, there is no judgment exhibited by the proposed Claimant.

9. If the judgment sought to be reviewed was the one delivered by the Magistrates Court, then the proposed party approached the wrong forum.

10. The Summons is dismissed with no order on costs considering that the proposed party and the Respondent are family.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF DECEMBER 2021.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For applicants        Kennedy Chweya Onsembe, County Attorneys Chambers

For Respondent       Gichaba & Co. Advocates

For proposed party   D.K. Otwere & Co. Advocates

Court Assistant       Chrispo Aura