



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 156 OF 2014**

**JOSPHAT MACHARIA GATHII**

**CLAIMANT**

v

**KSC INTERNATIONAL LTD (in receivership) RESPONDENT**

**RULING NO. 3**

1. Before Court is a motion dated 2 May 2017 by the Claimant seeking

1. THAT the sum of Kshs 208,452/= which was deposited into this Court by the Respondent and being the balance of the decretal sum, costs and interest be released to M/S KARANJA-MBUGUA & COMPANY ADVOCATES.

2. The application was served upon the Respondent and it filed a replying affidavit sworn by its advocate, Henry Omino, in opposition.

3. Arguments were taken on 22 June 2017.

4. A brief background to the application is that by a judgment delivered on 13 March 2015, the Court had found and held that the termination of the Claimant's employment was unfair and awarded him a total of Kshs 1,447,384/- as compensation and dues accruing from the contractual relationship (by the time of judgment, the Respondent had not informed the Court that it had been placed under receivership on 18 February 2015 by Bank of Africa and on 20 March 2015 by Kenya Commercial Bank Ltd).

5. The Respondent was aggrieved with the judgment and it filed a Notice of Appeal on 23 March 2015.

6. On 6 May 2016, the Respondent filed an application seeking an order staying execution/attachment which had commenced.

7. The Court dismissed the motion on 2 November 2016.

8. Three weeks later, on 21 November 2016, the Respondent filed another application seeking another order of stay of execution/attachment and review of the ruling of 2 November 2016.

9. The Court, in a ruling delivered on 25 November 2016 allowed the order seeking review by vacating the dismissal of the application of 6 May 2016 on condition the Respondent deposited Kshs 208,452/- being the balance of decretal sum and costs awarded the Claimant.

10. The Claimant seeks the release of the monies deposited into Court on the ground that there are no pending proceedings in the file.

11. The Respondent resists the release of the monies deposited in Court on the ground that there are subsisting Court orders (in Nairobi High Court Commercial & Admiralty Division, Civil Suit No. 446 of 2015) restraining the Plaintiffs therein from interfering with the Receivers of the Respondent.

12. While it is not disputed that the High Court issued certain orders on 6 May 2016, the copy of the order annexed to the replying affidavit indicate that the Respondent did not appear before the High Court on the day the orders were issued and that a mention was scheduled for 19 May 2016.

13. This Court hopes that the Respondent is not attempting to use the High Court proceedings to delay finalisation of this Cause.

14. Be that as it may, the Court notes from the record that the firm of Nyachoti & Co. Advocates were on record for the Respondent before it was placed under receivership and that the firm of Walker Kontos, Advocates though filing applications alluded to earlier, have never sought leave of Court to come on record or to introduce the Receivers formally into the instant Cause.

15. In the view of the Court, the Receivers and their advocates in this particular Cause are formally not on record, and therefore their opposition to the application by the Claimant and any applications on record are incompetent.

16. The Court would therefore allow the motion dated 2 May 2017.

**Delivered, dated and signed in Nakuru on this 31<sup>st</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Mr. Karanja instructed by Karanja-Mbugua & Co. Advocates

For Respondent                  Mr. Opar instructed by Walker Kontos Advocates

Court Assistant                  Nixon