



**Oyatsi v Nzoia Sugar Company Limited (Cause 361 [N] of 2009)
[2022] KEIC 1 (KLR) (Employment and Labour) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEIC 1 (KLR)

**REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
EMPLOYMENT AND LABOUR
CAUSE 361 [N] OF 2009**

J RIKA, J

JULY 22, 2022

BETWEEN

FRANCIS OYATSI CLAIMANT

AND

NZOIA SUGAR COMPANY LIMITED RESPONDENT

RULING

1. This court delivered a Ruling dated 25th day of February 2022, directing the Claimant to refund the respondent a sum of Kshs. 8,061,000.
2. The amount became refundable, upon a successful Appeal [Nairobi C.A. No. 47 of 2012] lodged by the respondent, against the Judgment that was delivered by the Industrial Court in favour of the Claimant, on November 16, 2011.
3. The decretal sum was Kshs. 13,646,271. The Court of Appeal reduced the Award of the Industrial Court to Kshs. 2,879,189. The balance of Kshs. 8,061,100 became refundable, the claimant having received the entire decretal amount of Kshs. 13,646,271, before the Appeal was heard and concluded.
4. The claimant has filed an Application dated March 4, 2022, seeking the following orders: -
 - a. [spent]
 - b. [spent]
 - c. That pending inter parte hearing, there be interim conservatory orders to maintain the status quo prevailing in this case prior to the ruling and order made herein on February 28, 2022.



- d. That in the alternative, pending inter parte hearing of the Application, there be a stay of execution of the decree issued herein as ordered in the said ruling and order of February 28, 2022.
 - e. That pending the hearing and determination of the Intended Appeal against the ruling and order of this court made on 28th February 2022, there be interim conservatory orders to maintain the status quo in the case prior to the ruling and order made herein on February 28, 2022.
 - f. That pending the hearing and determination of the Intended Appeal against the ruling and order of this Court made on February 28, 2022, there be a stay of execution of the decree issued herein as ordered in the said ruling and order of February 28, 2022.
 - g. Any other order or orders to meet the ends of justice.
5. It was agreed that the Application is considered and determined through written submissions. Parties confirmed filing and exchange of the submissions at the last appearance in court, on June 7, 2022.

The Court Finds: -

6. The Claimant still pursues the line of thought, that the Judgment of the Court of Appeal is invalid.
7. It was noted in the ruling of this Court [E&LRC] dated February 25, 2022 [not February 28, 2022 as stated by the claimant], that the claimant applied to the court of Appeal, to have the Court of Appeal ‘recall and cancel its Judgment.’
8. There is no order presented by the claimant in the present Application, showing that the Court of Appeal has ‘recalled and cancelled its Judgment.’
9. In the circumstances, this court [E&LRC] must remain bound by the Judgment of the Court of Appeal, and uphold its enforcement.
10. That Judgment reduced the sum awarded to the Claimant by the Industrial Court, and the balance ought to be refunded to the respondent, so long as the Judgment of the Court of Appeal is in force.
11. The court entirely agrees with the submissions of the respondent that the claimant has not established conditions warranting grant of the orders sought, because the money in issue, belongs to the respondent; there is no order staying the Judgment of the Court of Appeal; and the claimant has not deposited the decretal sum in court for due performance.
12. The Application filed by the claimant is without merit. He ought to consider negotiating the mode of refund with the respondent, or pursue his Application at the Court of Appeal. The hands of the E&LRC are tied. Conservatory orders, or stay of execution orders, as prayed cannot be issued by this court, while there is a valid Judgment of the Court of Appeal, granting the claimant Kshs. 2,879,189, against what he initially received, courtesy of the Industrial Court, at Kshs. 13,646,271.
13. The E&LRC does not think that there is any dispute pending before it, on the ownership of the amount subject matter of the restitution orders of February 25, 2022, to warrant orders that bar the Respondent from having its money back. If such a dispute, on the amount payable to either Party, is pending before the Court of Appeal, let the Claimant pursue orders of stay at the Court of Appeal. As stated in the ruling of February 25, 2022, this court cannot ignore the existing Judgment of the Court of Appeal, and the Order settling the terms of the Decree issued by the Court of Appeal.

It is ordered: -



- a. The Application filed by the Claimant, dated 4th March 2022 is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 22ND
DAY OF JULY 2022.**

James Rika

Judge

