



**Bata Kenya Limited v Najori & 2 others (Employment and Labour Relations Appeal E172 of 2025) [2025] KEELRC 2493 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2493 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E172 OF 2025**

**JW KELI, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**BATA KENYA LIMITED ..... APPELLANT**

**AND**

**PELKY KILARO NAJORI ..... 1<sup>ST</sup> RESPONDENT**

**HR STRATEGIC PARTNERS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**PEOPLE LINK CONSULTANTS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Ruling & Order of the Chief Magistrate's Court at Limuru (Hon. P.M. Mugure (P.M.) Limuru MCELRC No. E011 of 2022 delivered on 12th June, 2024)*

**RULING**

1. The applicant, dissatisfied with the ruling of the lower court said to be dated 12th June 2024, filed a notice of motion application dated 27th May 2025, brought under Sections 1A, 1B, 3, 3A & 63 (e) of the [Civil Procedure Act](#), Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules 2010, and all other enabling provisions of the law, seeking the following orders-
  - a. Spent
  - b. That the Honourable Court be pleased to enlarge time to permit the Appellant to file the present appeal out of time.
  - c. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue a stay of proceedings of the Lower Court being Limuru CMELRC NO. E011 of 2022 - Pelly Kilario Najori v Bata Kenya Ltd & 2 Others.



- d. That pending the hearing and determination of this Appeal, this Honourable Court be pleased to issue a stay of proceedings of the Lower Court being Limuru CMELRC NO.E011 of 2022 - Pelly Kilario Najori v Bata Kenya Ltd & 2 Others.
- e. That the costs of this Application abide the outcome of the appeal.

### **Grounds of the application**

2. The Claim before the Lower Court was for unfair and unlawful termination of employment and compensation thereof.
3. The Appellant, who was listed as the 1st Respondent, in addition to filing a response to the suit, filed a Notice of Preliminary Objection because the suit ran afoul of the provisions of Section 90 of the Employment Act and was thus time-barred by statute.
4. At the same time, the Appellant filed a Notice of Motion Application alleging misjoinder owing to the fact that there was no employee-employee relationship between themselves and the Claimant.
5. The two Applications were heard together initially fixed for ruling on 5th June, 2024. However, on that day, the Court did not sit and no directions thereon were issued as to when the ruling would be subsequently delivered.e) The ruling was subsequently delivered on 12th June, 2024 without notice to the Appellant.
6. The Appellant has just learnt of the ruling and is aggrieved by the decision on both the Notice of Preliminary Objection and the Notice of Motion Application, to which he has preferred an Appeal.
7. The Appellant contends that the Appeal is not only arguable, but also highly meritorious given that it challenges the numerous aspects of law and facts that were disregarded by the Learned Magistrate as he rendered her decision. To wit;-
  - i. The Learned Magistrate erred by holding that the provisions of a Subsidiary Law can oust the provision of a substantive law.
  - ii. The Learned Magistrate inferred that an employer-employee relationship where non existed.
8. Even after informing the presiding Magistrate of the intention to lodge an Appeal, the Magistrate has proceeded to fix the Lower Court matter for hearing on 30th July, 2025.
9. If this Honourable Court does not stay the Lower Court suit, the same will proceed despite a grave misapplication and misinterpretation of the law, to the detriment of the Appellant, who is the Principal Respondent.
10. That it is in the interest of justice that the orders sought are granted
11. That the Appellant is willing to promptly prosecute the Appeal herein, and believes that no prejudice will be visited upon the Respondents if the orders sought vide this Application are granted.
12. The application was supported by the affidavit of Priscah Chege, dated 27th May 2025, in which she attached a copy of the memorandum of claim, the notice of preliminary objection, the notice of motion dated 1st March 2023, and the memorandum of appeal.
13. The court noted that the applicant did not annex the Ruling and Order of the Chief Magistrate's Court at Limuru (Hon. P.M. Mugure (P.M.) Limuru MCELRC No. E011 of 2022), which was delivered on 12th June 2024, for which leave to appeal out of time was granted. One of the grounds for the extension of time is the existence of an arguable appeal.



14. The 1<sup>st</sup> respondent opposed the application through their replying affidavit dated 9<sup>th</sup> June 2025.

**Decision**

15. The application was canvassed by way of written submissions.

16. The issue for determination was whether the application was merited.

17. The court established that the applicant did not produce the impugned ruling. Therefore, the court was unable to determine whether there were arguable grounds of appeal to justify or warrant the extension of time. The stay relates to the appeal. Due to the absence of the annexure of the impugned ruling, the court could not assess the existence of an arguable appeal and consequently had no basis to extend the time or grant a stay as requested. The court further finds that no prejudice would be suffered by the applicant if the stay is not granted, as they can always appeal if dissatisfied with the final judgment.

18. In the upshot, for the foregoing reasons, the application is dismissed with costs to the 1<sup>st</sup> respondent.

19. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Applicant- absent

Respondent: absent

