



**Mutongu v St. Paul's University (Employment and Labour Relations Petition  
E081 of 2023) [2025] KEELRC 2588 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2588 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E081 OF 2023  
MN NDUMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**REV. DR. ZABLON MUTONGU ..... PETITIONER**

**AND**

**ST. PAUL'S UNIVERSITY ..... RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion application dated 4/4/2025 seeking an order in the following terms:-
  1. Spent
  2. Spent
  3. That pending the hearing and determination of the intended appeal, this Honourable court be pleased to grant an order of stay of execution of the judgment delivered on 31<sup>st</sup> October 2024 and any resultant decree or consequential orders therefrom.
  4. That the costs of this application be provided for.
2. The application is premised on grounds (a) to (j) set out on the face of the Notice of Motion and buttressed in the Supporting Affidavit of Jared Ogutu a member of the Respondent's University Council.
3. The grounds may be summarized that the court awarded a judgment dated 31/10/2014, in favour of the Respondent in the sum of Kshs. 9,214,478.00 which figure includes costs duly taxed and interest.
4. That the Applicant being partly dissatisfied with the judgment lodged a Notice of Appeal and filed its record of appeal being CoACA No. E210 of 2025, St. Paul University versus Rev. Dr. Zablon Bundi.



5. That the appeal is arguable; that the Respondent had commenced execution process; and the Applicant is likely to suffer substantial loss if execution takes place and the appeal is successful.
6. That the Respondent is no longer an employee of the Applicant and it would be difficult to recover the decretal sum if paid out to the Respondent before the appeal is determined.
7. That the Applicant is willing and ready to provide a bank guarantee for the sum of Kshs. 9,214,478.00 plus interest and costs being 100% of the judgment sum as security for the due performance of the decretal sum.
8. That the Respondent shall suffer no prejudice if the application is granted.
9. The Respondent filed a Replying Affidavit dated 14/4/2025 opposing the application stating that the Applicant has not satisfied the requirements of Order 42 Rule 6(2) of the Civil Procedure Rules 2010 which provides the condition for the grant of an order for the stay of execution pending an appeal as follows:-
  - (2) No order for stay of execution shall be made under subrule (1) unless -
    - (a) the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has given by the Applicant”
10. In that the Applicant has not demonstrated he would suffer substantial loss if the order for stay of execution is not granted. That no security for due performance of the order has been offered.
11. That there is delay in filing the application since judgment was delivered on 31/10/2024 and the application is dated 4/4/25. That the Applicant is indolent and was awakened by the filing of the bill of costs dated 2/12/2024. That the application be dismissed. That the court rely on the case of Phoebe Nasambu Kisongoch versus Fortcom Holdings Ltd ELRC cause no. 2337 of 2017 in which the court was satisfied that the applicant did not satisfy the tenets for grant of stay of execution.
12. The Applicant filed further affidavit restating its case and joining issue with the application. Applicant adds that it has offered security for due performance of the decree. That it had already filed an appeal and the record of appeal which matter was pending directions by the Court of Appeal. That there was no substantial delay in filing the appeal and this application. That it is in the interest of justice that the application be granted.
13. The Applicant relies on the case of John Mwangi Ndiritu versus Joseph Ndiritu Wamathai [2016] eKLR, in which the locus classicus case of Butt versus Rent Restriction Tribunal [1952] KLR 417 was cited with approval as follows:
 

The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal... A Judge should not refuse a stay if there are good grounds for granting it merely because of his opinion a better remedy may become available to the Applicant at the end of the proceedings...” (Emphasis added)
14. Upon considering the depositions and submissions by the parties the court allows this application and grant the following orders:-



- a. The court grants stay of execution of the judgment delivered on 31/10/2024 and any resultant decree or consequential orders pending the hearing and determination of the intended appeal on the condition that the Applicant provides a bank guarantee for the sum of Kshs. 9,214,478.00 plus interest until the pending appeal is heard and determined as security for the due performance of the decretal sum.
- b. The said bank guarantee to be provided within 30 days of this order failure of which the order shall lapse and execution to follow.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Ashitiva Advocates LLP for the Applicant/Respondent

I.A. Guserwa & Co. Advocates for the Respondent/Claimant

Mr. Kemboi – Court Assistant

