



REPUBLIC OF KENYA



**Rosslyn Valley Developments v Amayi & 7 others (Appeal E177 of 2025)
[2025] KEELRC 2466 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2466 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E177 OF 2025
JW KELI, J
SEPTEMBER 18, 2025**

BETWEEN

ROSSLYN VALLEY DEVELOPMENTS APPLICANT

AND

**SHADRACK OSHU AMAYI 1ST RESPONDENT
ABEL MUNOGE AHUTA 2ND RESPONDENT
SILVANUS ALEMBA 3RD RESPONDENT
GERISHOM MIHESHO 4TH RESPONDENT
SEBASTIAN BILLY MASINGA 5TH RESPONDENT
PETER KAMAU 6TH RESPONDENT
BENSON KIMOYANI AMBANI 7TH RESPONDENT
DENIS OCHIENG 8TH RESPONDENT**

*(Being an Appeal from the Ruling and Orders of the Honourable Tom Mark Olando (PM)
dated and delivered virtually on 8th May 2025 in Nairobi CMELR Cause No. E2540 of 2024)*

RULING

1. The applicant filed a Notice of Motion dated 20th June 2025, brought under Section 12 (3) (i) and (viii) of the [Employment and Labour Relations Court Act](#), Rule 44, and 5(3) of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#), and all other enabling provisions of the law for Orders.
 - i. That this Application be certified as urgent and service be dispensed with in the first instance.
 - ii. That this Honourable Court be pleased to grant a stay of the proceedings in Nairobi CMELR Cause No. 62540 of 2024 pending interpartes hearing and determination of this Application.



- iii. That this Honourable Court be pleased to grant a stay of the proceedings in Nairobi CMELR Cause No. E2540 of 2024 is pending the hearing and determination of the substantive appeal.
 - iv. That the costs of this application be provided for.
 - v. That the Court be pleased to grant any further orders in the interest of justice.
2. The application was supported by the annexed affidavit of Paul Mackenzie of the same date, which annexed a copy of the memorandum of claim filed in the lower court, a copy of the Notice of Preliminary Objection and the application all before the lower court, leading to the impugned ruling. The affidavit also contained an annexed draft memorandum of appeal.

Grounds of the Application

3. The Nairobi CMELR Cause No. E2540 of 2024, which is the subject of this appeal, is scheduled for a pre-trial conference on 24 June 2024. Upon confirmation of compliance, a hearing date will be fixed.
4. The Appellant has appealed against the Ruling and Orders of Honourable Tom Mark Olando (PM) dated and delivered virtually on 8th May 2025 in Nairobi CMELR Cause No. E2540 of 2024, which relates to, among other things, the Honourable Court's jurisdiction. In the Ruling, the Learned Magistrate held that alia- That the Court has jurisdiction to hear and determine a claim filed out of time, stating that the period of conciliation should be taken into account when reckoning limitation. The appellant submitted that this was despite the decision of the Court of Appeal in *Attorney General & Another v Andrew Maina Gitinji & Another* [2016] KECA 817 (KLR), where the Court held that time begins to run from the date of termination of employment, irrespective of conciliation. This position was reaffirmed in *Juma & 5 Others v Mada Holdings t/a Baobab Sea Lodge* (Civil Appeal E034 of 2022).
5. That the Honourable Court had jurisdiction to determine matters that were conclusively resolved during conciliation. That this was despite the decision of the Court of Appeal in *Daniel Njuguna Muchiri v Sugar Bakery Limited* [2019] KECA 712 (KLR), where it was held that once a matter is resolved through such a process, it is binding and bars subsequent litigation. The appeal will be rendered nugatory, moot and an academic exercise if this application is not heard urgently and an order of stay of proceedings pending hearing of the Appeal is issued.
6. The intended appeal is arguable and has a high chance of success.
7. It is in the interest of justice that this application be heard as a matter of urgency and the orders sought be granted.
8. The Claimants will not suffer any prejudice should the proceedings in Nairobi CMELR Cause No. E2540 of 2024 be stayed pending the hearing and determination of this Appeal.

Response

9. The Respondents opposed the application through the Replying Affidavit sworn by the 1st Respondent on 2nd July, 2025. It is the Respondents' contention that the appeal is unmeritorious and that the present application is merely intended to frustrate and delay the hearing of the employment dispute pending before the Chief Magistrates Court.



Decision

10. The application was canvassed by way of written submissions. Both parties filed and the court considered the submissions.

11. At the core of the ruling of the lower court was issue of whether or not the claim was time-barred. The legal principles for the stay of proceedings are set out in *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

12. The issue of time limitation is at the core of the jurisdiction of the court to handle the dispute. Section 89 of the *Employment Act* reads-

“89. Limitations

Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this *Act* or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

13. The impugned ruling arose from a Notice of Preliminary Objection filed by the Applicant to effect that the court had no jurisdiction for the claim was time-barred (PM2).

14. The principles of stay, as per decided cases, are that there has to be an arguable appeal and that it is in the interest of justice that the stay of further proceedings before the lower court be granted, taking into account the need to expeditiously dispose of cases. I adopt the position stated by Ringera J in *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000 persuasively stated thus;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity



and optimum utilization of judicial time and whether the application has been brought expeditiously”

15. On perusal of impugned ruling found that the trial court held-

“The P.O is seeking orders that the claim be declared statutory barred having been filed more than three years from the time the claimant services were terminated contrary to Section 90 of the Employment Act.

Section 90 refers to continuing injury and stipulates that such suits ought to be filed within 12 months.

I have considered the application together with the submissions and replying affidavit and I find that indeed the suit was filed more than three years after the cause of action arose which is against the law as the time limit is three years. However, the claimant states that the matter had been referred to conciliation and there after the respondent had been waiting for the applicant to comply with the outcome of the conciliation.

As stated in the case of KNPSWU v The Watchdog Limited Nairobi ELRC No. 1308 of 2017 it is true that once a dispute is submitted for conciliation by the minister and a conciliator appointed, the pace and conclusion of the conciliation process is beyond the control of the claimant and it would be unfair to include the period spent during conciliation in reckoning limitation.

Since it is not denied that the delay was as a result of the conciliation, I find that the time only starts to run after the determination of the matter.

I thus find that the suit is not time barred and the preliminary objection lacks in merit.”

16. Taking the foregoing into account, the court finds on a *prima facie* basis that a case of an arguable appeal has been established, taking into account the provisions of section 89 of the Employment Act. The court holds that the stay of proceedings is justified for the court to decide on the jurisdiction as any further steps by the lower court, if, without jurisdiction, would be a nullity and a wastage of previous judicial time. The court is guided by Owners of the MV Lilian S v Caltex Oil (Kenya) Ltd [1989] eKLR, where the Court of Appeal held that:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

17. Having established a *prima facie case* and an arguable appeal, I find it is in the interest of justice to grant the orders sought in the application. The application is allowed. This Honourable Court is pleased to grant a stay of the proceedings in Nairobi CMELR Cause No. E2540 of 2024 pending the hearing and determination of the substantive appeal. Cost in the cause.

18. The record of appeal must be filed within 30 days. Mention on 21st October 2025 to issue further Court directions concerning the appeal.

19. It is so Ordered.



DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Applicant: - Ondече

Respondent: Absent

