



Teachers Service Commission v Mutiso (Employment and Labour Relations Appeal E126 of 2025) [2025] KEELRC 2494 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2494 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E126 OF 2025**

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

BETWEEN

TEACHERS SERVICE COMMISSION APPLICANT

AND

STEPHEN KITUU MUTISO RESPONDENT

(Being an Application for stay of proceedings in CMELRC No. 958 OF 2024 pending the hearing and determination of intended appeal against the Ruling of Hon. T.M Orlando delivered on 2nd April 2025)

RULING

1. The applicant aggrieved by the ruling of the Hon. T.M Orlando delivered on 2nd April 2025 filed Notice of Motion dated 7th May 2025 brought under Article 159 of the Constitution, Sections 3A, 75, 78, 79G of the Civil Procedure Act and Order 42 rule 6 (1) and 8 of the Civil Procedure Rules, Rule 21 of the Employment and Labour Relations Court Rules and all enabling provisions of law for Orders-
 - a. Spent
 - b. That the Honourable Court be pleased to order Stay of Proceedings in Nairobi CMELRC No. E958 of 2024 pending the Hearing and determination of this Application.
 - c. That the Honourable Court be pleased to order Stay of proceedings in Nairobi CMELRC No. E958 of 2024 pending the Hearing and determination of the intended Appeal.
 - d. That the costs of this application be provided for.
2. The application was supported by the affidavit of Amos Langat and annexed copies of the memorandum of claim, the Preliminary Objection, the impugned ruling, and the memorandum of appeal.



Grounds of the application

3. That the Ruling of the Applicant's Preliminary Objection dated 25th June 2024 in this matter was delivered on 2nd April 2025.
4. That the Applicant has indicated its desire to contest the Ruling by lodging a Memorandum of Appeal before this Court on various grounds of law and fact, as well as made a formal request for the certified copy of Ruling and proceedings.
5. That the Applicant has an arguable Appeal with high probability of success.
6. That the Applicant has a right in law to Appeal and is desirous to exercise the said right.
7. That unless this Application is urgently heard and determined, the Claim will be scheduled for hearing before the Chief Magistrates Court to the detriment of the Applicant.
8. That In the event the Claim before the trial Court proceeds, the Applicant is likely to suffer irreparable loss since its intended Appeal shall be rendered nugatory.
9. That It is in the interest of justice and fairness that the orders be granted to preserve the substratum of the Appeal.
10. That the Applicant has brought this application expeditiously and in good faith in exercise of its right of Appeal.
11. That the Applicant has a right in law to Appeal and is desirous to exercise the said right.
12. That It is in the interest of justice and fairness that the orders be granted to preserve the substratum of the Appeal.
13. That the Respondent will not be prejudiced if the proceedings in Nairobi CMELRC No. 958 of 2024 are stayed.
14. The application was opposed by the respondent vide his replying affidavit dated 13th May 2025, to the effect that there was no arguable appeal disclosed, no prejudice demonstrated to be suffered by the applicant if stay of proceedings is not granted, and on the contrary, he would suffer prolonged delay of justice.

Decision

15. The application was canvassed by way of written submissions, which the court perused.
16. At the core of the ruling of the lower court was the 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.”

17. The issue of time limitation is at the core of the jurisdiction of the court to handle the dispute. Section 89 of the *Employment* 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.”

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

19. The principles of stay as per the decided cases are that there is an arguable appeal filed timeously 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”

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

‘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 respondent in his affidavit state that he had filed an appeal which was dismissed in July 2022. The applicant did not deny that the claimant had appealed and which appeal was only determined in July 2022.

As state in the case of *KNPSWU vs 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 appeal which had been filed by the claimant, I find that the time only starts to run after the determination of the appeal.

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

The same is dismissed for want of merit.”

21. Taking the foregoing ruling into consideration and the provisions of section 89 of the *Employment Act*, the court finds on prima facie basis an arguable appeal has been established by the applicant. The court holds that the stay of proceedings is justified for the court to decide on the jurisdiction of the trial court, as any further steps by the court, if, without jurisdiction, would be a nullity and 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.”

22. Having established that the applicant, on a prima facie basis, has 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.
23. The record of appeal be filed in 30 days. Mention on 21st October 2025 for further directions.
24. 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:-absent

Respondent: Namukuru h/b Brian Khaemba

