



**China Wu Yi v Langat (Employment and Labour Relations Appeal
E030 of 2025) [2025] KEELRC 2635 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2635 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E030 OF 2025
AN MWAURE, J
SEPTEMBER 26, 2025**

BETWEEN

CHINA WU YI APPELLANT

AND

ERIC LANGAT RESPONDENT

RULING

Introduction

1. The Appellant/Applicant filed a Notice of Motion dated 19th May 2025, under Certificate of Urgency, seeking the following orders that:
 1. Spent
 2. This Honourable court be pleased to grant an order of stay of execution of the decree issued on 19th July 2024, warrants of sale and attachment dated 8th May 2025 and the proclamation notices dated 12th May 2025, pending the hearing and determination of this application.
 3. This Honourable court be pleased to grant an order of stay of execution of the decree issued on 19th July 2024, warrants of sale and attachment dated 8th May 2025 and the proclamation notices dated 12th May 2025 pending the hearing and determination of this appeal.
 4. As a condition to prayer 2 and 3 above, this court do order that the Appellant/Applicant to make a security deposit of the decretal sum from the decree dated 19th July 2024.
 5. This Honourable Court be pleased to set aside the Judgement and all consequential orders entered on 19th January 2024, and this case be heard de novo.
 6. The costs of this application be borne by the Respondent.



2. The application is expressed to be brought under the provisions of Order 42 Rule 6(6) of the Civil Procedure Rules, section 1A, 1B, 3A and 78(2) of the Civil Procedure Act Cap 21 of the Laws of Kenya and other enabling provisions of the law.

Appellant/Applicant's Case

3. The application is supported by the affidavit sworn by Zhang Hua, one of the Appellant/Applicant's local representatives and manager, dated the same date as the application, with two annexures thereto.
4. The Appellant/Applicant avers that it is challenging the judgment of Kshs.1,193,416/= entered against them, arguing that the Respondent was not their employee and the claim for workplace injury was baseless.
5. Despite filing an application to set aside the decree, citing improper service via unofficial email and lack of employment relationship, the trial court dismissed it, focusing only on the service issue. The Respondent has since obtained warrants of attachment and issued a proclamation to seize property.
6. The Appellant/Applicant now seeks injunctive relief, offering to deposit security and presenting employment records and affidavits to support their Case, asserting that the Respondent aims to enrich himself unjustly and that the impending sale would cause irreparable harm to their business.

Respondent's Replying Affidavit

7. The Respondent, on the other hand, opposes the Appellant's application dated 19th May 2025 vide Replying Affidavit dated 2nd July 2025.
8. The Respondent avers that the application is frivolous, incompetent, and an abuse of court process.
9. The Respondent avers that his original claim was a civil suit for work injury compensation in Narok CMCC 130 of 2018, not an employment dispute, and therefore any appeal should lie with the High Court, not the Employment and Labour Relations Court.
10. The Respondent argues that the appeal was filed outside the statutory timeline without leave, and accuses the Appellant/Applicant of forum shopping and attempting to evade compliance with court orders.
11. The Respondent avers that the prolonged litigation, coupled with the physical and financial hardship resulting from the injury, has been deeply exhausting, and urges this Honourable court to dismiss the application to allow him to enjoy the fruits of the judgment awarded in his favour.

Appellant/Applicant's Further Affidavit

12. The Appellant/Applicant filed a response to the Respondent's replying affidavit dated 30th May 2025 vide Further Affidavit dated 2nd July 2025, affirming that paragraphs 1, 2, and 4 are descriptive and not denied, while denying paragraph 3 on grounds that the Respondent was not employed by the Appellant/Applicant.
13. The Appellant/Applicant avers that the Employment and Labour Relations Court (ELRC) has jurisdiction under Article 162(2)(a) of the Constitution and section 12(1) of the Employment and Labour Relations Court Act, 2011.
14. The Appellant/Applicant avers that the initial appeal was filed at Narok High Court HCCA/E016/2025 within the statutory timeline but was withdrawn upon realizing jurisdictional error, and the current appeal was filed promptly.



15. The Appellant denies forum shopping, confirms compliance with court orders, and maintains that the appeal is merited as the Respondent's claims were granted without the Appellant being heard. The Appellant reiterates the contents of the supporting affidavit dated 19th May 2025 and urges this Honourable Court to allow the application as prayed.
16. Parties canvassed the application by way of written submissions.

Appellant/Applicant's Submissions

17. The Appellant/Applicant submitted that it is challenging the trial court's finding of liability for workplace injury, arguing that ELRC has jurisdiction under section 12(1) of the *ELRC Act* and Article 162(2) of the *Constitution* to determine employment-related disputes. The Appellant/Applicant relied on the case of *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* [2017] KECA 231 (KLR), where the Court of Appeal stated that appeals from magistrates on employment matters rightly lie with the ELRC.
18. The Appellant contends that the Respondent failed to discharge the burden of proof under Sections 107, 109, and 112 of the *Evidence Act*, as affirmed in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334 where the Court of Appeal stated that generally, under section 107(1) of the *Evidence Act*, Cap 80, the responsibility to prove a claim rests with the party who seeks the court's intervention and asserts the positive side of the issue. Additionally, sections 109 and 112 impose an evidentiary burden on any party who wishes the court to accept the existence of a specific fact; they must provide sufficient proof of that fact. No employment documents or credible evidence were presented. The Appellant relied on the cases of *Kaiga v Das* [2023] KEELRC 2194 (KLR) and *Casmir Nyakundi Nyaberi v Mwakikar Agencies Limited* (2016) eKLR, which emphasise that jurisdiction and liability hinge on proof of employment.
19. Further, the Appellant argues that liability for workplace injury hinges on the existence of an employment relationship that gives rise to a duty of care, as recognized under both common law and statutory frameworks, including the *Work Injury Benefits Act* and the *Occupational Safety and Health Act*. In *West Kenya Sugar Company Limited v Busburu* [2023] KEELRC 549 (KLR), the court dismissed the claim due to a lack of evidence proving the Respondent was employed by the Appellant at the time of injury. Similarly, in *Statpack Industries v James Mbiti Munyao* [2005] KEHC 2043 (KLR), the court emphasized that the burden of proof lies with the plaintiff to establish a causal link between the Defendant's negligence and the injury. This principle is echoed in *Halsbury's Laws of England* (4th Ed., para. 662), which affirms that the plaintiff must prove duty, breach, and causation to succeed in a negligence claim.
20. On stay of execution, the Appellant/Applicant invoked Order 42 Rule 6(2) of the *Civil Procedure Rules*, asserting substantial loss if execution proceeds, citing the case of *Kenya Shell Ltd v Benjamin Karuga Kibiru* [1986] eKLR where the court held that it is generally prudent to assess whether the requirements under Order 42 Rule 6 of the *Civil Procedure Rules* are satisfied. Demonstrating substantial loss, whether financial, personal, or procedural, is a fundamental criterion in both jurisdictions when considering the grant of a stay. The Appellant/Applicant also submitted that the application was filed promptly, security was deposited, and the appeal raises arguable legal and factual issues.
21. In conclusion, the Appellant/Applicant prays that the appeal be allowed as prayed by setting aside the trial court's judgment, and a stay of execution granted.



Respondent's Submissions

22. The Respondent submitted that ELRC lacks jurisdiction under section 12(5) of the ELRC Act, which only permits appeals from decisions of the Registrar of Trade Unions or other prescribed tribunals. Since the current appeal arises from a civil suit before the Magistrates' Court, it should properly be heard by the High Court. The Respondent accuses the Appellant/Applicant of forum shopping, having initially filed Narok High Court Civil Appeal No. E016 of 2025, before withdrawing it after obtaining stay orders from the ELRC. The Respondent relied on the cases of Owners of Motor Vessel "Lilians" vs Caltex Oil (K) Ltd (1989) KLR 1(CAK), and Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR), where the court stated that jurisdiction must be derived strictly from the Constitution or statute and cannot be assumed. The Respondent relied on the cases of HCIG-Energy Investment Co. Ltd and Liketh Investment Kenya Limited (HCIG Consortium) v Ministry of Energy & Petroleum Contracting Authority & 5 others [2014] KEHC 1458 (KLR), Francis Gitau Parsimei & 2 others v National Alliance Party & 4 Others [2012] KEHC 2603 (KLR), Kipkalya Kiprono Kones v Republic & another Ex-parte Kimani Wa Nyoike & 4 others [2006] KECA 364 (KLR) and Speaker of the National Assembly v Karume (2008) 1 KLR (EP) 42 where the courts stated that where legislation provides a clear redress mechanism, it must be followed. Accordingly, the Respondent urges the ELRC to decline jurisdiction and strike out the appeal.
23. The Respondent Submitted that the Appellant/Applicant's Memorandum of Appeal was filed on 28th May 2025, beyond the 30-day statutory period following the Principal Magistrate's ruling on 24th April 2025, and without leave of court. The Respondent cited the case of Mae Properties Limited v Joseph Kibe & Another [2017] KECA 238 (KLR), the Respondent emphasizes that court rules and timelines are mandatory and failure to comply attracts consequences.
24. The Respondent opposes the application for stay pending appeal, arguing that the Applicant has failed to demonstrate an arguable appeal or that the appeal would be rendered nugatory if stay is denied. The Respondent relied on the cases of Chris Munga N. Bichage v Richard Nyagaka Tongi & 2 Others [2013] KECA 141 (KLR) and Mohammed Salim t/a Choice Butchery v Nasserpuria Memon Jamat [2013] KEHC 2099 (KLR), where the court emphasizes that both limbs, arguability and risk of nugatory outcome, must be satisfied. The grounds of appeal are vague and unsupported by evidence, contrary to sections 107, 108 and 109 of the Evidence Act. The Appellant/Applicant's fears of execution are speculative, with no proof of imminent action by the Respondent, who is financially capable. Moreover, no order has been annexed to the application, rendering it fatally defective.
25. In conclusion, the Respondent urges the dismissal of both the appeal and application with costs, asserting that justice demands that the Respondent enjoy the fruits of his judgment delivered after eight years.

Analysis and Determination

26. The Honourable Court has considered the application, replying affidavit, further supporting affidavit, together with the submissions by both parties; the issues for determination are as follows:
 - a. Whether this Honourable Court has jurisdiction to entertain this Appeal;
 - b. If (a) above is in the affirmative, whether the Appellant/Applicant has fulfilled the requirement under Order 42 Rule 6 of the Civil Procedure Rules and;
 - c. Who should bear the costs of the application?



27. The jurisdiction of this Honourable Court (ELRC) is established under Article 162(2) of the Constitution, which is of equal status as the High Court and section 12(1) of the ELRC Act which provides that the court has exclusive original and appellate jurisdiction over all employment and labour relations disputes as outlined in Article 162(2) of the Constitution and relevant laws. This includes conflicts between employers and employees, trade unions, employer organizations, and their respective members, as well as disputes concerning the registration, election of trade union officials, and enforcement of collective agreements.

28. In Owners of Motor Vessel "Lilians" vs Caltex Oil (K) Ltd (*supra*), where at page 14, Nyarangi JA stated;

“Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending evidence. A court of law downs the tools in respect to the matter before it, the moment it holds the opinions that it is without jurisdiction.”

29. In Law Society of Kenya, Nairobi Branch v Malindi Law Society & 6 Others (*supra*), the Court of Appeal held that appeals from magistrates on employment matters rightly lie with the ELRC.

30. In the instant case, the Respondent had initially instituted proceedings in the Chief Magistrate’s Court at Narok under Narok CMCC No. 130 of 2018. Looking at the plaint annexed to the Respondent’s replying affidavit reveals that the suit was a civil claim for personal injury, and did not arise from an employment relationship. The court does not have the benefit of perusing the judgment of the said Chief Magistrate as is not annexed.

However, the Appellant/Applicant pursued an appeal in Narok HCCA No. E016 of 2025, where the High Court granted the reliefs sought among them an interim stay of execution of the decree issued on 19th July 2024. The Applicant was also ordered to deposit the decretal amount in the court within 14 days of that date. These orders *inter-alia* were granted on 20th May 2025 in Narok High Court.

31. At the same time on 28th May 2025 the Applicant filed another application before this court under certificate of urgency. Similar orders were granted as already granted by the High Court on the same day. It is not clear what the Applicant hoped to achieve by filing this application before ELRC Court when he already had been granted stay of execution orders by the Narok High Court.

The court would say this was an abuse of court process. There is no evidence that the High Court case was withdrawn. So it would appear the Applicant was truly forum shopping and is not clear what he hoped to achieve by filing the case simultaneously in two courts of concurrent jurisdiction.

32. The court finds this is a case that was before the High Court for appeal and that was the proper court. The case having been heard at a Civil court should have proceeded in the High Court for appeal and not a specialised Court (ELRC).

33. As poetically penned in the case of Owners of Vessel "Lillians" -vs- Caltex Oil (*supra*) the court stated that where a court has no jurisdiction it should do nothing but to down its tools. The ELRC court has no jurisdiction to hear this application and is dismissed accordingly.

The applicant will be condemned to pay the costs of this application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF SEPTEMBER, 2025.

ANNA NGIBUINI MWAURE



JUDGE

Order

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

