



**Kulati v Music Copyright Society Limited (Cause E113 of 2022)
[2025] KEELRC 2737 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2737 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E113 OF 2022
BOM MANANI, J
OCTOBER 7, 2025**

BETWEEN

MILCAH KHAKAYI KULATI CLAIMANT

AND

MUSIC COPYRIGHT SOCIETY LIMITED RESPONDENT

RULING

Background

1. Before the court is the Respondent’s application dated 17th March 2024 seeking to stay execution of the court’s decree that emanates from the judgment that was delivered in the cause on 16th December 2024 in favour of the Claimant. The Respondent contends that it has preferred an appeal against the decision to the Court of Appeal. As such, it contends that it is necessary to stay enforcement of the decision in order to preserve the substratum of the appeal.
2. The Respondent contends that it is ready to offer security for the performance of the decree in terms of Order 42 rule 6 of the *Civil Procedure Rules*. It further contends that if the order for stay of execution does not issue, it stands to suffer substantial loss.
3. The Claimant is opposed to the application. She avers that the Respondent has not met the conditions for grant of stay of execution pending appeal. According to her, the Respondent has not cogently demonstrated the substantial loss that it will suffer if the decree is enforced. She further argues that the Respondent has not provided sufficient security for the performance of the decree. The Claimant further avers that the application for stay of execution was filed after inordinate delay. As such, she prays that the request be declined.
4. Notwithstanding the foresaid position by the Claimant, she avers that should the court be minded to grant the orders sought, it should do so on stringent conditions. In this regard, she proposes that



the Respondent should be ordered to deposit the decretal sum in court as a condition for grant of the orders sought.

Analysis

5. The law on stay of execution pending appeal is encapsulated in Order 42 rule 6 of the *Civil Procedure Rules*. The court's jurisdiction to entertain a request for stay of execution pending appeal to the Court of Appeal is triggered when an appeal to that court is filed.
6. For purposes of the Order, an appeal to the Court of Appeal is deemed as filed once a Notice of Appeal is lodged. This is apparent from rule 4 of the Order which provides as follows:-

“For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.”
7. The court record shows that the Respondent lodged a Notice of Appeal against the court's decision on 20th January 2025. As such, the court is satisfied that its jurisdiction has been properly invoked under the aforesaid provision of statute.
8. Order 42 rule 6 of the *Civil Procedure Rules* sets out three conditions which an applicant for an order for stay of execution pending appeal must fulfil before the court can grant the order. These are:-
 - a. He/she must demonstrate that he/she will suffer substantial loss if the order sought is not granted.
 - b. He/she must provide security for the performance of the decree/order in the event that the appeal fails.
 - c. He/she must move the court timeously for the order of stay pending appeal.
9. With respect to the first condition, the Respondent contends that it will suffer substantial loss if the orders sought are not granted. Conversely, the Claimant contends that the Respondent has not demonstrated the nature of loss that will result from the order not being issued.
10. The Respondent contends that the money it handles belongs to its members. As such, it insinuates that if the Claimant is allowed to execute the impugned decree, its (the Respondent's) members will suffer loss. As such and in order to protect the said members, it (the Respondent) contends that it is necessary to stay execution pending resolution of the appeal.
11. Essentially, I understand the Respondent to be stating that the loss that is likely to flow from the execution process will affect more persons than itself. In this context, the Respondent implies that the loss will be substantial.
12. I acknowledge that the Respondent is an agency which serves various individuals who comprise its membership. As such, it is plausible that enforcement of the decree may impact on its members despite the pendency of the appeal. As such, it is in the interest of justice that enforcement of the decree be held in abeyance pending resolution of the proposed appeal.
13. As has been indicated through case law, the term “substantial loss” does not necessarily denote irreparable loss. Rather, it denotes any loss, great or small, that is of real worth or value (see *Tropical Commodities Suppliers Ltd and Others v International Credit Bank Limited (in liquidation)* (2204) EA 331). In the instant case, I am satisfied that should the order for stay of execution not issue in favour of the Respondent, it is likely to suffer substantial loss if it succeeds on appeal after execution of the impugned decree has already been implemented.



14. The court is alive to the principle that the Claimant, as the successful party in the suit, is entitled to enjoy the fruits of her judgment. However, it (the court) is also duty bound to ensure that the substratum of Respondent's intended appeal is not destroyed. In the premises, it (the court) must endeavor to balance the competing interests of the parties in order to uphold the scales of justice.
15. The court record shows that whilst the court delivered its decision on 16th December 2024, the instant application was filed on 21st March 2025. This was approximately three (3) months down the line.
16. However, the court is alive to the fact that the period between 21st December and 13th of January is discounted when computing time fixed by a rule or an order of the court. Taking this fact into account, the court finds that the instant application was not filed after undue delay.
17. Regarding the requirement for provision of security, the Respondent has offered to comply with reasonable conditions for stay pending appeal. In the court's view, the interests of the parties will be best served if they both have control of the decretal sum pending resolution of the appeal.

Determination

18. In the premises the court grants stay of execution of the decree that emanated from the judgment that was delivered on 16th December 2024 subject to the following conditions:-
 - a. The Respondent deposits the entire decretal sum into a joint interest earning account in the names of the advocates for the parties within forty five (45) days of this order.
 - b. The parties to agree on the financial institution which will house the joint account within seven (7) days of this order failing which, the Deputy Registrar of the court to appoint a bank for them.
 - c. Should the Respondent fail to comply with clause a) above, the stay of execution order issued herein to automatically lapse and the Claimant to be at liberty to execute the decree.
 - d. In order to monitor compliance with clause b) hereof, this matter shall be mentioned before the Deputy Registrar of the court immediately after the lapse of seven (7) days from the date hereof.
 - e. The Claimant is granted costs of the application.

DATED, SIGNED AND DELIVERED ON THE 7TH DAY OF OCTOBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI



JUDGE

