



**Karimi v Tradco Services Limited (Cause E096 of 2023)  
[2025] KEELRC 2660 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2660 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E096 OF 2023  
M MBARŪ, J  
OCTOBER 2, 2025**

**BETWEEN  
HILDAH NYAGUTHII NDUNGE KARIMI ..... CLAIMANT  
AND  
TRADCO SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. The respondent, Tradco Services Limited, filed an application dated 11 September 2025 under article 50(1) of *the Constitution*, section 3 of the *Employment and Labour Relations Court Act*, and Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, seeking orders for a stay of execution of the judgment delivered on 27 March 2025 and for costs to be paid.
2. The application is supported by the Supporting Affidavit of Jane Wangari, a legal officer, who states that the court has the authority to stay its judgment pending an appeal to the Court of Appeal. As a trial court, it may have made an incorrect decision or issued an unsuitable order, and on this basis, the respondent requests a stay of execution.
3. Ms Wangari asserts that the respondent’s appeal has a high chance of success. There is a likelihood that the respondent’s projects will be hindered due to the diversion of funds intended to satisfy the decree, which will prejudice the appeal.
4. The application is made without delay, and the respondent is willing to abide by the security conditions to safeguard the right of appeal. There is a request for typed proceedings, which has delayed the filing of the appeal. The decretal sum is substantial at KSH 2,106,205, and if paid, the claimant will not be able to request a refund once the appeal is successful.
5. In reply, the claimant submitted her Replying Affidavit asserting her right to enforce the judgment delivered in her favour. In this respect, the court is functus officio. The respondent filed a Notice of Appeal on 9 April 2025, which was rejected by the Court of Appeal. No other notice has been filed



since. The respondent has not sought leave to appeal out of time. Since 27 March 2025, there has been no pending appeal or application for a stay of execution or an extension of time. The current application is made without lawful cause and should be dismissed with costs.

Both parties appeared and presented oral submissions in court.

6. Taking into account the application, affidavits, and submissions, the single issue for determination is whether a stay of execution should be allowed in favour of the respondent as the applicant.
7. The respondent has relied on Article 50(1) of *the Constitution* to support its case for a stay of execution. There were no specific submissions on this aspect. However, Article 50(1) of *the Constitution* must be interpreted with caution and applied correctly whenever it is cited, especially in civil or employment and labour relations claims, as held in *Shollei v Judicial Service Commission & another* [2022] KESC 5 (KLR). A general reference to Article 50(1) of *the Constitution* without proper application cannot suffice to support an application for a stay of execution of the judgment. Its meaning, relating to the right to be heard in a public place by the court, would be undermined through a literal application.
8. Also, the provisions of section 3 of the *Employment and Labour Relations Court Act* must be applied appropriately. To juxtapose the provisions as herein done would not elicit any meaningful application.
9. An applicant seeking a stay of execution of the court's judgment is guided by principles outlined in Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, read together with Order 42 Rule 6 of the Civil Procedure Rules. The governing principles are;
  - a. That a substantial loss may result to the applicant unless the order is made.
  - b. Application has been made without unreasonable delay.
  - c. Security as the court orders for the due performance.
10. The respondent has only requested a stay of execution of the judgment herein without specifying the purpose for the stay. There is no pending appeal nor any intention to file one. No Notice of Appeal has been filed, nor is there an actual appeal in progress. The loss that may be suffered is minimal, as the claimant holds a valid judgment and has a legitimate expectation that it should be enforced, as established in *Mwangi t/a Karinga Mwangi & Company Advocates v RAEI Investment Limited; Wanyama & another (Interested Parties)* [2025] KEELC 6097 (KLR).
11. Judgment herein was delivered on 27 March 2025. No application for stay of execution was filed for five (5) months. The delay in failing to address this is inordinate and not excusable, as held in *Mbukoni Services Limited & another v Mutinda Reuben Nzili & 2 others* [2021] KEHC 4795 (KLR). The court in this case held that where there is an unreasonable delay in seeking a stay of execution, the court's discretion is fettered.
12. Without satisfaction of the two principles above, to offer a deposit of security for the due prosecution of the appeal that is non-existent would have no foundation.
13. Accordingly, the application dated 11 September 2025 is without merit and is hereby dismissed with costs.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:



Court Assistant: Japhet

..... and .....

