

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEALS DIVISION

ELRC APPEAL NO. E234 OF 2025

SANA INDUSTRIES LIMITED.....APPLICANT/APELLANT

-VERSUS-

OMOKE KEMUNTO VIOLETRESPONDENT

(Consolidated with Applications in Appeals Nos. 235, 236, and 237 of 2025)

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The Appellant filed an application by way of Notice of Motion dated 11th April 2025 brought Section 1A,1B,3A,65 and 79G of the Civil Procedure Act, Order 50 Rule 3, 5, Order 51 Rules 1,3 and 4 of the Civil Procedure Rules 2010 and All Other Enabling Provisions of the law, for Orders:-
 - i. ISPENT
 - ii. SPENT
 - iii. The Applicant be granted leave to file an appeal out of time against the judgement delivered on 18th June 2025 by Hon. Noelle Kyanya in the Chief Magistrates court Ruiru Law courts MCELRC E071 OF 2024.

- iv. THAT this Honorable Court be pleased to stay the execution of the Judgment and Decree of this Honorable Court issued on 19th day of June 2025 pending the hearing and determination of this Application.
- v. THAT this Honourable be pleased to grant an Order for stay of all proceedings in the trial Curt, pending the hearing and determination of the appeal.
- vi. THAT our client is ready to issue a security of the decretal sum in the form of a motor vehicle logbook.
- vii. THAT the Application be heard inter parties on such date and time as this Honourable Court may direct.
- viii. THAT the cost be provided for.

2. GROUNDS OF THE APPLICATION

- a) THAT judgment in the subordinate court matter was delivered on 18th June 2025, wherein the respondent herein was awarded Kshs 622,080.00.
- b) THAT immediately thereafter the Applicant/Appellant, through their advocates, sought 30 30-day stay of execution of the Judgment and leave to appeal the said decision.
- c) THAT the prayer for stay of execution and leave was granted.
- d) THAT the duration given for stay of execution and leave to appeal granted expired on 18th July 2025.
- e) THAT the Applicant/ Intended Appellant is dissatisfied and aggrieved by the Judgment and has opted to Appeal the entire judgment.

- f) THAT the applicant is ready to provide security for the decretal sum being the original logbook for motor vehicle.
- g) The intended Respondent filed MCELRC E071 OF 2024 in the chief magistrate's court Ruiru.
- h) That the matter proceeded for hearing before Hon. Noelle Kyanya and judgement delivered on 18th June 2025.
- i) The Applicant was prevented from filing the Appeal on time as the judgement so delivered on 18th June 2025 since the CTS was down for the better part of last two weeks.
- j) Failure to file the Appeal on time by the Applicant is not willful but the same was occasioned by the none availability of the CTS.
- k) The timeframe for filing this appeal lapsed on 18th of July 2025 and there is need for this court to enlarge time to allow the applicant to file an Appeal out of time.
- l) The Applicant undertakes to lodge the intended appeal and record whereof expeditiously within such time as the honorable court may order upon granting the requisite leave.
- m) THAT this Application will not occasion any prejudice to the Respondent.
- n) THAT this Application has been done without any unreasonable delay.
- o) It is in the interest of justice to allow this Application and ensure that the Applicant's right of Appeal is not obstructed.
3. The application was supported by the affidavit of Agnes Kagwiria sworn on the 21st July 2025 where she annexed the impugned judgment dated 18th June 2025 (AK-1), copies of notices regarding CTS downtime(AK-2) and the proposed memorandum of appeal.

4. The application was opposed by the respondent through her replying affidavit sworn on the 6th August 2025 where she also annexed the impugned judgment.
5. The application was canvassed by way of written submissions. Both parties filed.

Issues for determination

6. The court having perused the submissions by the parties was of the considered opinion that the issues for determination were as follows-
 - a. Whether the appellant has satisfied the requirements for filing an appeal out of time?
 - b. Whether the appellant has satisfied the requirements for the grant of Orders of Stay of Execution pending hearing and determination of the Appeal?
 - c. Who should bear the costs of this Application?

Whether the appellant has satisfied the requirements for filing an appeal out of time?

The applicant's submissions

7. The judgment/decree subject of the intended appeal was delivered on 18th June 2025. Under Section 79G of the Civil Procedure Act, an appeal from a subordinate court to the High Court must be filed within thirty (30) days from the date of the decree or order appealed against. The Applicant herein intended to file the appeal within the statutory period. However, the CTS was non-operational during the critical window for filing making it impossible for the applicant to lodge the appeal within the set timeframe. The judiciary issued several notices on the same which was annexed in our affidavit. The applicant acted with promptitude and diligence and immediately upon restoration of the CTS, took steps to prepare and file the application. Section 79G of the Civil Procedure Act provides that: "Every appeal from a subordinate court to the High Court shall be filed

within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time."

8. The delay in filing the appeal was occasioned solely by the failure of the Judiciary e-filing portal, which was down for the better part of the last two weeks prior to filing of the application by the applicant. This was a matter beyond the Applicant's control and not due to any indolence or lack of diligence. In support of our argument, we rely on the case of *Gerald M'Limbine v Joseph Kangangi* [2008] eKLR, where the court held that; "My understanding of the proviso to section 79G is that an applicant seeking "an appeal to be admitted out of time" must in effect file such an appeal, and at the same time seek the court's leave to have such an appeal admitted out of the statutory time. The proviso does not mean that an intending appellant first seeks the court's permission to admit a non-existent appeal out of the statutory period" The applicant herein has attached the memorandum of appeal in the supporting affidavit which raises pertinent issues for appeal. In the matter of *Abdulla v Crown Petroleum (K) Limited* [2024] KEELRC 364 (KLR) the court in allowing to extend time for filing of an appeal held that: "The applicant has attached his draft Memorandum of Appeal to his Supporting Affidavit, it is only fair that his right of appeal is secured and time extended to allow him to urge his appeal." The day was occasioned by the CTS being non-operational and the notices issued by the judiciary confirm that the portal was down for the better part of the two weeks to lapse of the 30 days' statutory duration. To buttress on our argument, we seek to rely in the case of *Odero v Republic* [2024] KEHC 7289 (KLR) where the court held that "The reason for the delay is given

as the technical issued of e-filing that has now been resolves by the prison administration. 3.I observe that the delay in filing the appeal is not inordinate as the application was ready for filing on 2nd May 2024 but the filing was done late I allow the application and grant the Applicant Daniel Odero leave to file an appeal out of time...”

Respondent’s submissions

9. The Application is brought under section 79G of the Civil Procedure Act which provides; "79G. Every appeal from a subordinate court to the High court shall be filed within a period of thirty days from the date of the decree or order appealed against excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order, provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time. we humbly submit that the Applicant has not met the conditions set out in section 79 G for grant of leave to file appeal out of time. These conditions were restated in the Supreme Court decision in the case of **Nicholas Kiptoo Arap Kori Solat Vs. Independent and Electoral and Boundaries Commission & 7 Others (2014) eKLR** where the court stated; "It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are; First, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is grant" The supreme court went further to state; "Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the

discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; whether there will be any prejudice suffered by the Respondents if the extension is granted; whether the application has been brought without undue delay; and whether in certain cases, like election petitions, public interest should be a consideration for extending time." It is not disputed that the appeal ought to have been filed by 18th July 2015. The Applicant allege that it was prevented from filing its appeal in time because the CTS was down for 2 weeks. The Applicant has annexed a notice from the Judiciary titled "System Intermittent Outage." The same is dated 11th July 2025 at 7 am. The notice indicated there was an outage on the e-filing system and cause list portal and that the technical team was working round the clock to ensure full system restoration. The notice went further to advise that applications under certificate of urgency and time-bound pleadings be forwarded through the respective court stations email addresses and copy registrarautomation@court.go.ke and registrarautomation@gmail.com for processing. The notice also gave contact details for any further enquiries. It is clear from the notice that there was a system outage on 11th July 2025. There is no evidence indicating that the outage was still persisting as at 18th July 2025. Furthermore, if such outage persisted to 18th July 2025, the applicant was not left helpless as the judiciary had provide an alternative means for parties to file urgent matters and any time bound pleadings. The Applicant has not given any explanation why it did not use the alternative mode to file its appeal being a time bound pleading. The applicant slept on its right to appeal and cannot now come to court to seek the court exercise of its discretion in its favour. The Applicant is underserving of exercise of the court's discretion in its favour. We find guidance in the decision in the case of Dilpack Kenya Ltd Vs. William Muthama Kitonyi Machakos HCCA No. 142 of 2013 where the court held; The court went further to state; "In an application for extension of

time, where the court is being asked to exercise discretion, there must be some material before the court to enable its discretion to be exercised. Once there is noncompliance, the burden is upon the party seeking indulgence to satisfy the court why the discretion should nevertheless be exercised in his favour and the rule is that where there is no explanation there shall be no indulgence." "Section 79 G of the Civil Procedure Act requires that before the court enlarges the time for appealing the applicant must satisfy the court that he had good and sufficient cause for not filing the appeal in time. In **Alibhal Musahee Vs. Shariff Mohammed Al-Bet Civil Appeal No. 283 of 1998**, the court of Appeal held that whereas the civil procedure Act allows for extension of time for filing appeal, if good and sufficient cause is shown, failure to act does not constitute a good or sufficient cause." We humbly submit that the Applicant failed to act as directed by the notice from the judiciary on the alternative means to file time bound pleadings. It has not given any explanation for not acting and we submit that the application must fail for lack of good and sufficient cause. Chances of Appeal succeeding and prejudice to the Respondent. We humbly submit that the draft Memorandum of Appeal does not raise any arguable grounds. The appeal is frivolous with no chances of success. On the other hand the Respondent has suffered and continuous to suffer prejudice as she is prevented from enjoying the fruit of her well-deserved judgement.

Decision

10. The time of filing appeals in the court is as stated in rule 12 of the ELRC Rules 20204 to wit- '**12. Time for filing appeals**

(1)Where a written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified under that written law.(2)Where an appeal is from a magistrate's court or where no period of appeal is specified in the written law referred to in

subrule (1), the appeal shall be filed within thirty days from the date the decision is delivered.’’ The appeal was not filed within 30 days, and the applicant stated that the reason for the delay was that the Judiciary e-filing system was not working during that period. The applicant produced notices from the Judiciary on the e-filing system outage (AK-2). The respondent was of the opinion that the applicant could still have filed using means for urgent matters. Those alternative means were not disclosed. Rule 18 of the Court rules of 2024 provides for extension of time as follows: ‘ 18.

Extension of time

The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.’’The conditions for extension of time to file an appeal were restated in the Supreme Court decision in the case of Nicholas Kiptoo Arap Kori Solat Vs. Independent and Electoral and Boundaries Commission & 7 Others (2014) eKLR where the court stated; "It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are; First, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is grant" The supreme court went further to state; "Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; whether there will be any prejudice suffered by the Respondents if the extension is granted; whether the application has been brought without undue

delay; and whether in certain cases, like election petitions, public interest should be a consideration for extending time."

11. The existence of the Judiciary e-filing system outage in the material time when the appeal was due for filing was not in dispute. I find it is a sufficiently good reason to allow the extension of time, taking into account that the applicant approached the court on 22nd July 2025, a few days after the expiry of the 30 days of the judgment delivered on 18th June 2025. In so holding, I am persuaded by the decision in Odero v Republic [2024] KEHC 7289 (KLR) where the court held that "The reason for the delay is given as the technical issue of e-filing that has now been resolved by the prison administration. 3.I observe that the delay in filing the appeal is not inordinate as the application was ready for filing on 2nd May 2024 but the filing was done late I allow the application and grant the Applicant Daniel Odero leave to file an appeal out of time..." The instant applicant faced similar challenges in lodging the appeal. I allow the application and grant the applicant leave to file appeal out of time.

Whether the appellant has satisfied the requirements for the grant of Orders of Stay of Execution pending hearing and determination of the Appeal?

Applicant's submissions

12. Primarily, the Appellant is seeking stay of execution of the Judgment of the Honourable Noelle Kyanya in MCELRC E071 OF 2024. The grounds upon which the application is premised exists on the face of the Notice of Motion and further elaborated in the Supporting Affidavit of Agnes Kagwiria, on behalf of the Applicant herein. The principles guiding the grant of a stay of execution

pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides: “No order for stay of execution shall be made under sub rule (1) unless— (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant. Further to the above, stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in Sections 1A and 1B of the Civil Procedure Act, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the Civil Procedure Act or in the interpretation of any of its provisions. Section 1A(2) of the Civil Procedure Act provides that “the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective” while under section 1B some of the aims of the said objectives are; “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.” From the foregoing, the Applicant submits that for stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely (a) that substantial loss may result to the applicant unless the order is made, (b) that the application has been made without unreasonable delay, and (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given. This position was similarly upheld in Antoine Ndiaye v African

Virtual University [2015] eKLR. ” that substantial loss may result to the applicant unless the order is made”.

13. What is substantial loss was discussed in the case of **James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR**, where the court stated that: “No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.” Notably, in the impugned judgment, the trial magistrate failed to apportion liability to the Respondent despite noting that she absconded duty, which then entitled the Appellant to terminate her employment. The effect of the said judgment is that the excessive damages were awarded when the Respondent in fact absconded duty, hence abetting her own dismissal from employment. There also now exists the apprehension that the Respondent may commence execution proceedings against the Applicant on account of the judgment, which the Applicant seeks to be set aside by the appellate court. Due to the unpredictability of the mode of execution the Respondent may prefer to fulfil the judgment, the Applicant stands to suffer irreparable harm, as the subject of the appeal, being quantum. The Respondent has equally not demonstrated that he is able to refund the sum if the appeal succeeds. The Respondent submits that this further buttresses his

point that the substance of the subject matter of the suit may be lost should stay pending appeal not be granted. Reliance is placed in the case of **RWW v EKW [2019] eKLR**, considered the purpose of a stay of execution order pending appeal, in the following words: “The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.” 9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.” Vide the foregoing, the Applicant submits that it is therefore imperative that there exists a subject matter for the determination of the court during the hearing of the Appeal and this can only be possible if the instant Application is allowed in terms of staying the execution of the impugned judgment and orders thereof pending hearing and determination of the Appeal. Otherwise, the Appellant will suffer substantial loss and the whole Appeal will be futile to the detriment of the Applicant.

14. Furnishing of security - the Applicant acknowledges that Order 42 (Rule 6) stipulates depositing of security of costs as a precondition for grant of stay pending appeal, the same is discretionary upon the courts. In the words of Justice Musyoka in **Simba Coach Limited v Kiriuyu Merchants Auctioneers [2019] eKLR** “There are no fast and hard rules on what and how much the security ought to be and in this case the court reserves its discretionary power to determine as per the circumstances of the case and the nature of the security.” Orders for security of costs have often

been granted in cases where the Respondent has adduced sufficient reasons to substantiate the apprehension that that the Applicant would be unable to pay the decretal sums should the appeal fail. The Applicant herein offered a motor vehicle KCB 014G valued at Kshs. 1,350,000.00 as security for the decretal sum of Kshs. 622,080.00. The Respondent opposed the use of motor vehicle as security citing that the same has to be in form of decretal sum (cash). The Applicant avers that it is unable to deposit the cash in court due to operational cost for the business which are straining liquidity. The Applicant is however offering an alternative security being the motor vehicle Registration number, KCB 014G Valued at Kshs. 1,350,000/- as alternative security. The Applicant avers that the nature of the business undertaken by the Applicant is extremely capital intensive, hence the need for additional cash flow. At the moment, the company is operating on an overdraft facility just to be able to meet its financial needs and hence will not manage to deposit the amount in court. The Applicant avers that it would suffer substantial loss to an extent that some of its workers will be terminated to ensure it continues with its operations. 36. In the matter of SAMVIR TRUSTEE LIMITED v GUARDIAN BANK LIMITED [2007] KEHC 2438 (KLR) the court held that: "...A stay would be overwhelming hindrance to the exercise of the discretionary powers of the court... The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. ... At the stage of the application for stay of execution pending appeal the court must ensure that parties fight it out on a level playing ground and on equal footing in an attempt to safeguard the rights and interests of both sides. The overriding objective of the court is to ensure the execution of one party's right

should not defeat or derogate the right of the other. The Court is therefore empowered to carry out a balancing exercise to ensure justice and fairness thrive within the corridors of the court. Justice requires the court to give an order of stay with certain condition.” the court in considering an alternative for security of cost allowed a land title to be used. This was held in the case of Eagle Group International Limited & 2 others v Hamisi [2023] KEHC 20081 (KLR) where the court in accepting a land title as a security held that: - “11.The duty of this court is balance the interests of the parties. The appellant has a right of appeal while the respondent has a right to enjoy the fruit of his judgment. 12.The applicant submitted that the gist of the appeal was that the Trial court failed to appreciate that the filing of this appeal by the appellant/applicants was mainly grounded on the fact that the respondent had been paid the whole amount she claims and that the Appellants were not accorded a chance to be heard which led to the impugned exparte judgment. 13.I find that the respondent cannot suffer prejudice that cannot be compensated by an award of damages. 14.I allow the Appellant to deposit a land title deed for land reference no Ngong/Ngong/5198 from the appellant/ applicants as adequate security pending the hearing and determination of the intended appeal.” The court in the matter of Ojwang v Kahiu & 2 others [2024] KEHC 8761 (KLR) in accepting a motor vehicle as a security of cost held that: - “The respondent will not suffer any prejudice if there is adequate security in due performance of the decree. I will therefore grant the application on the following conditions: (1) That the applicant deposits with this court the log book of motor vehicle registration No. KWB 868 Mercedes Benz so long as he will file with the court a valuation report from a reputable valuation firm and the value of the motor vehicle is found to be higher than the decretal sum being claimed in this matter.” To buttress on our security for cost, we rely in the case of Karanja v Kakai; Khushi Motors Ltd & 2 others (Judgment debtor) [2022] KEHC 12281 (KLR) where the court in allowing a motor vehicle as a security for cost held as follows: “In

the circumstances of this case, it would be doubly unjust to demand that the applicant deposits security. In any event, the subject motor vehicle is sufficient security in this case. It would be sufficient security to place a condition that the applicant shall not sell, alienate, or use as collateral the subject motor vehicle.” The Applicant herein has issued a motor vehicle KCB 014G valued at Kshs. 1,350,000.00 as security for the decretal sum of Kshs. 622,080.00. The Applicant has also filed a valuation report issued on 6th August 2025 by Sterring Automobile Valuers & Assessors ltd. The Respondent has not demonstrated that if the Applicant is unsuccessful in the Appeal, it would be unable to pay the decretal sum and therefore the application for depositing security is incompetent and unmeritorious and ought to be dismissed with costs to the Appellant.

The Respondent’s submissions

15. The respondent submitted that the Applicant has not met the conditions for grant of stay of execution pending Appeal which are; That the Application has been filed without undue delay. That the Applicant has demonstrated that substantial loss may result unless stay orders are granted. That the Applicant has given security for the due performance of the decree or order as may ultimately be binding on him at the end of the determination of the appeal. We humbly submit that though the application was filed slightly more than a month after the judgment was delivered, the Applicant has not demonstrated that it will suffer irreparable loss if the order for stay of execution is not granted. In the case of **Glanfranco Monethi & Another Vs. Africa Merchant Assurance Co. Ltd (2019) eKLR** the court stated thus in regards to substantial loss; "Under order 42 rule 6 of the Civil Procedure Rules the Applicant must demonstrate that without stay of execution he will suffer irreparable harm or what is commonly referred to as substantial loss which cannot be compensated by way of damages. In the case of **Federal Commission of Taxation Vs. Myer Emporium Ltd 1986 160 CLR 2020** the court held "It well established by authority that the discretion which it confers to

order stay of proceedings is only exercised where special circumstances exist which justify departure from the ordinary rule that a successful litigant is entitled to the fruits of his litigation pending the determination of any appeal." Discussing the very point on substantial loss platt, JA in the case of **Kenya Shell Ltd Vs. Benjamin Keruga Kibiru and Others 1982-85 IKAR 1018** observed; "Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay, that is what has to be prevented." In the case **Pan Africa Insurance Co. Ltd Vs. International Air Transport Association High Court No. 86 of 2006** held as follows on substantial loss; "The deponent should go a step further to lay the basis upon which the court can make a finding that the applicant would suffer a substantial loss as alleged. The applicant should go beyond vague and general assertion of substantial loss in the event a stay order is not granted." We humbly submit that the Applicant has not made out a case that it would suffer substantial loss to merit an order of stay of execution. In regards to the condition for security, the Appellant in its Further Affidavit proposes to deposit a logbook for motor vehicle registration No. KCB 014G as security for the Decree. The Respondent has not proved ownership of the motor vehicle as it has not attached an official search for the motor vehicle. The Respondent is further opposed to the proposed security as being inadequate. We further submit that the proposed security offers no security at all for the decretal amount. The decretal sum as per the judgment of the trial court is Kshs. 622,080 plus costs and interest. We note that the Applicant has offered the same motor vehicle as security of the decree in the following other matters: Case No. ELRCA NO. E235 OF 2025 ELRCA NO. E236 OF 2025 ELRCA NO. E234 OF 2025 ELRCA NO. E237 OF 2025 TOTAL - Decretal Sum Kshs. 755,760 plus costs and interest Kshs. 535,680 plus costs and interest Kshs. 622,080 plus costs and interest Kshs. 481,500 plus costs and interest Kshs. 2,395,020 This being a money decree, we humbly submit the the same can only be adequately secured by depositing the decretal sum of Kshs.

622,080 into a joint interest earning account to be held by advocates for both parties or a deposit of the said amounts in court. We further submit that the motor vehicle would not serve the purpose of security. The motor vehicle would still be in the use and control of the Appellant. The Applicant use of the motor vehicle comes with such risks as damage through accidents, loss through theft and in the event of such eventualities the Respondent will be left exposed. The same being a moveable property is prone to depreciation. It is common knowledge that its value will continue to depreciate and one cannot say with certainty the value of the motor vehicle at the conclusion of the Appeal. Furthermore, the Respondent will still be forced to pursue execution against the Appellant in the event the appeal is unsuccessful and as such the motor vehicle does not serve the purpose of security for the money decree thus defeating the purpose of having it as security. Our courts have severally held that the purpose of security is to ensure that if the appeal is unsuccessful, the decree holder will not have to initiate execution proceedings where the decree is a money decree. This was as held in the case of Gianfrano Manenthi & Another Vs. Africa Merchant Assurance Company Ltd (2019) eKLR where the court stated; "Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgment involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal. In Arun C Sharma -VS- Ashana Raikundalia T/A Rairundalia & Co. Advocates justice Gikonyo the court stated that; "The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor..... Civil process is quite different because in civil process the

judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose." Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that the courts do not assist litigants to delay execution of decrees through filing vexation and frivolous appeals. In any event, the issue of the deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. We humbly submit that a security for the decree must be adequate and ought to be one that ensures that the Respondent can get his money without any difficulties in the event the appeal is unsuccessful. We find guidance in the case of **Matata & Another Vs. Rono & Another (Civil Appeal E034 of 2024) (2024) KEHC 2799 (KLR)** where the court stated; "The court must similarly consider the overriding objective and balance the interest of the parties to the suit while considering the issue of security to be offered. The law is that where the applicant intends to exercise his undoubted right of appeal, and in the event, that he were eventually to succeed, he should not be faced with a situation in which he would find himself unable to get back its money. Likewise, the respondent who has a decree in his favour should not, if the applicant were eventually to be unsuccessful in its intended appeal, find it difficult or impossible to realize the decree. This is the cornerstone of the requirement for security. In a nutshell the proposed security does not offer protection to the Respondent, the same is inadequate and we urge the court to so find. We further submit that in the event the court is inclined to allow the Application, we urge the court to order the Appellant to deposit the entire decretal sum of Kshs. 622,080 in a joint interest earning bank account to be held by the advocates for the parties within 30 days

Decision

16. Rule 73 of the Employment and Labour Relations Court Rules of 2024 provides as follows-

‘(2)Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.’ The relevant rule under the Civil Procedure Rules is Order 42 Rule 6 to wit- **‘6. Stay in case of appeal [Order 42, rule 6]**

(1)No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.(2)No order for stay of execution shall be made under subrule (1) unless—(a)the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and(b)such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.’

17. The court already determined there was no unreasonable delay in filing the application. The slight delay of a few days was explained. Since this is a money decree, the court believed that the respondent's failure to file an affidavit of means demonstrating their ability to refund the money if paid in the event the appellant was successful on appeal demonstrated a substantial risk of the appellant losing any paid money. This risk could make the appeal nugatory.

18. On the issue of security for performance of the Decree- the respondent submitted that the applicant had not proved ownership of the motor vehicle it submitted as security as it has not attached an official search for the motor vehicle. The Respondent is further opposed to the proposed security as being inadequate. That the proposed security offers no security at all for the decretal amount. The decretal sum as per the judgment of the trial court is Kshs. 622,080 plus costs and interest. The respondent noted that the Applicant has offered the same motor vehicle as security of the decree in the following other matters: Case No. ELRCA NO. E235 OF 2025 ELRCA NO. E236 OF 2025 ELRCA NO. E234 OF 2025 ELRCA NO. E237 OF 2025 TOTAL - Decretal Sum Kshs. 755,760 plus costs and interest Kshs. 535,680 plus costs and interest Kshs. 622,080 plus costs and interest Kshs. 481,500 plus costs and interest Kshs. 2,395,020. The respondent contended the best security was deposit of the decretal sum in joint interest earning account. The applicant submitted that it had offered a motor vehicle registration number KCB 014G valued at Kshs. 1,350,000.00 as security for the decretal sum of Kshs. 622,080.00.. It relied on Ojwang v Kahiu & 2 others [2024] KEHC 8761 (KLR) where the court in accepting a motor vehicle as a security of cost held that: -
“The respondent will not suffer any prejudice if there is adequate security in due performance of the decree. I will therefore grant the application on the following conditions: (1) That the applicant deposits with this court the log book of motor vehicle registration No. KWB 868 Mercedes Benz so long as he will file with the court a valuation report from a reputable valuation firm and the value of the motor vehicle is found to be higher than the decretal sum being claimed in this matter.” To buttress on the said security, the applicant further relied in the case of Karanja v Kakai; Khushi Motors Ltd & 2 others (Judgment debtor) [2022] KEHC 12281 (KLR) where the court in allowing a motor vehicle as a security for cost held as follows: *“In the circumstances of this case, it would be doubly unjust to demand that the applicant deposits security. In any event, the subject motor vehicle*

is sufficient security in this case. It would be sufficient security to place a condition that the applicant shall not sell, alienate, or use as collateral the subject motor vehicle.”

19. The Applicant herein has issued a motor vehicle KCB 014G valued at Kshs. 1,350,000.00 as security for the decretal sum of Kshs. 622,080.00. The Applicant has also filed a valuation report issued on 6th August 2025 by Steering Automobile Valuers & Assessors Ltd. The court agreed that a motor vehicle is a good security so long as the original log book is deposited in court and the applicant does not sell or use as a collateral the said motor vehicle KCB 014G. The court allows the stay of execution in this application with respect to the Judgment in Ruiru MCELRC NO. E071 OF 2024 delivered on the 18th June 2025 only. The applicant has not offered security for the other appeals, namely E235, E236, and E237 of 2025, under which a temporary stay of 30 days is hereby issued, and the extension is subject to the deposit of security for performance of the Decree with respect to the said 3 appeals.

WHO SHOULD BEAR THE COSTS OF THIS APPLICATION?

20. The applicant submitted that with regard to the costs of this Application, the same abide by the outcome of the Appeal. Conversely, the respondent submitted that the Appellant, having failed to file its appeal in time, should be ordered to meet the costs of this Application.

Decision

21. The court finds that in that instant case, costs are to the respondent, being the judgment holder, and the court having exercised discretion in favour of extension of time to file an appeal and in issuance of order of stay of execution.
22. In conclusion, the court allows the application as follows-

- A. **The court grants leave to the applicant to file an appeal out of time against the judgments delivered on 18th June 2025 by Hon. Noelle Kyanya in the Chief Magistrates court in Ruiru Law courts MCELRC E071 OF 2024, Ruiru Law Courts MCELRC E070 OF 2024, Ruiru Law Courts MCELRC E069 OF 2024 and, Ruiru Law Courts MCELRC E072 OF 2024. The memorandum of appeal to be filed within 30 days.**
- B. **THAT this Honourable Court be pleased to issue order of stay the execution of the Judgement and Decree of this Honourable court issued on 18th day of June 2025 pending the hearing and determination of the appeal in ELRCA E234 OF 2024 on condition that the original log book is deposited in court and the applicant does not sell or use as a collateral the said motor vehicle KCB 014G. The court allows the stay of execution in this application with respect to Judgment in Ruiru MCELRC NO. E071 OF 2024 delivered on the 18th June 2025.**
- C. **The applicant has not offered security for the other appeals namely 235,236 and 237 of 2025 under which the court issues a temporary stay of 30 days and the extension is subject to deposit of security in the three applications. Mention on 17th November 2025.**
- D. **The respondent is awarded costs of the application.**

23. It is so Ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF OCTOBER, 2025.

J. W. KELI

JUDGE

In the presence of

C/A Otieno

Applicant- Eredi

Respondent-Ms. Kang'ethe

ORIGINAL