

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO. E025 OF 2022

WARENG NEKOI MULTIPURPOSE

COOPERATIVE SOCIETY LTD..... CLAIMANT

VERSUS

ISAAC RUTO.....

RESPONDENT

RULING

1. The application before me for determination is dated 29th January, 2025 and has been brought by the Respondent under the provisions of Article 50 and 159(a), (d) and (e) of the Constitution, Section 3A and 63(e) of the Civil procedure Act, Section 17 of the Employment & Labour Relations Court Act, Order 42 Rule(6), Order 51 Rule (1), (3) and (4) of the Civil Procedure Rules 2010 and all other enabling provisions of law.
2. The Respondent seeks orders that:
 - a) Spent.

- b) That court be pleased to stay execution of the judgment herein pending the hearing of this application inter-partes.
 - c) That there be an order of stay of execution of the Judgment delivered on 16th January 2025, pending the hearing and determination of the present application.
 - d) That there be an order for stay of execution pending the hearing and determination of the appeal to the Court of Appeal
 - e) Costs of this application be in the cause.
3. The application is supported by the affidavit of ISAAC RUTO, the Respondent/Applicant herein sworn on 29th January 2025.
4. The grounds upon which the application is premised are contained at the foot of the application and in the supporting affidavit as follows:
- a) This court entered judgment on 16th January 2025 in favor of the Claimant against the Respondent
 - b) The Respondent is dissatisfied with the judgment of this court and has preferred an appeal to the Court of Appeal

- c) There are no orders of stay of execution and the Respondent is apprehensive that the Claimant may resort to execute the judgment
- d) The intended appeal has merit, raises triable issues and has high chances of success
- e) That, nonetheless, the Respondent is poised to execute the decree issued by the trial court on 1st December 2023 and has made his intention manifestly clear to the Applicant's Counsel
- f) That the Applicant has preferred an appeal to the Court of Appeal and served the notice of appeal accordingly
- g) That there is an arguable appeal filed before the Court of Appeal which has high chances of success and the Respondent stands to suffer prejudice
- h) That the Applicant stands to suffer irreparable loss and damage if the Claimant are not restrained by means of stay of execution.

5. In response, the Claimant filed a Replying Affidavit sworn on 25th May 2025 by Japhet Butia, its Chairman. The deponent avers that the application lacks merit, is frivolous and

otherwise an abuse of the Court process. He further deposes that the Application has been brought to court without regard to the stipulated timeline within which one ought to file a notice of appeal.

6. The deponent contends that the Applicant has not demonstrated any prospects of success in the intended appeal.
7. He further avers that the Applicant's allegation that he was notified by the Claimant to pay Kshs. 4 million, which allegedly prompted him to discover that judgment had been delivered, is baseless, unsubstantiated, and devoid of evidentiary support.
8. The Claimant further maintains that the Respondent has to date failed to file any memorandum of appeal to warrant the grant of stay of execution orders.
9. It is the Claimant's case that the Respondent was fully aware of the judgment date, as the same had been updated on the Judiciary portal nearly a month prior to the delivery of judgment.
10. The application was disposed of by way of written submissions, and only the Respondent filed his submissions dated 30th April 2025.

Determination

11. I have carefully considered the application, the supporting affidavit, the replying affidavit, and the submissions on record. The main issue for determination is whether the Applicant has met the threshold for the grant of an order of stay of execution pending appeal.
12. Order 46 Rule 6 (2) Civil Procedure Rules of the Civil Procedure Rules provides for the principles for grant of stay pending appeal. **Order 42 rule 6(2)** of Civil Procedure Rules provides as follows: -

“(2) No order for stay of execution shall be made under sub rule 1) unless—

- 1. 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,*
- 2. 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.”

13. Rule 5 of the Court of Appeal Rules also provides for stay of execution pending appeal as follows:

5. Suspension of sentence, injunction and stay of execution and stay of further proceedings

a. ...

b. Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—

in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 75, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.

14. Rule 75 of the Court of Appeal Rules provides lodging of Notice of Appeal as follows-

75. Notice of appeal

- a. *Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.*
- b. *Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.*
- c. *Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against a part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice.*
- d. *When an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be*

necessary to obtain such leave or certificate before lodging the notice of appeal.

e. where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging notice of appeal.

f. A notice of appeal shall be substantially in the Form D in the First Schedule and shall be signed by or on behalf of the appellant.

15. From the foregoing it is clear that in appeals to the Court of Appeal, stay of execution may only be granted where a notice of appeal has been filed. Rule 75 requires that such notice of appeal is filed within 14 days from date of judgment.

16. Rule 4 of the Court of Appeal Rules provides for computation of time as follows-

3. Computation of time

Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be reckoned in accordance with the following provisions—

- (i) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or that act or thing is done;*
- (ii) if the last day of the period is a Sunday or a public holiday (which days are in this rule referred to as excluded days) the period shall include the next following day, not being an excluded day;*
- (iii) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;*
- (iv) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time; or*

(v) unless the Court otherwise directs, the period of the Christmas vacation shall not be reckoned in the computation of time.

17. In the present case, judgment was delivered on 16th January 2025, and the Notice of Appeal was lodged on 21st January 2025, well within the timelines prescribed under Rule 75 as read with Rule 4 of the Court of Appeal Rules on computation of time.
18. The principles for grant of orders of stay of execution pending appeal were restated by the Court of Appeal in ***Principal Secretary, Ministry of Education, Department of Vocational & Technical Training & another v Kenya Union of Post Primary education Teachers (KUPPET) & 2 others (Civil Application E248 of 2022) [2024] KECA 683 (KLR) (14 June 2024) (Ruling) Neutral citation: [2024] KECA 683 (KLR)*** as follows-

“... the applicable principles in an application for stay of execution: the applicants must satisfy the Court that they have an arguable appeal and that unless the order

*of stay of execution is granted, the appeal will be rendered nugatory if it succeeds. See **Stanley Kangethe Kinyanjui v. Tony Ketter & Others [2013] eKLR**). The applicant is obliged to satisfy both principles and will not be entitled to the order of stay by satisfying only one of them. (See **Republic v. Kenya Anti-Corruption Commission & 2 Others [2009] KLR 31**).*

19. In the instant case, the Applicant contends that he has lodged a notice of appeal and intends to challenge the judgment of this Court delivered on 16th January 2025. He avers that the intended appeal raises arguable and triable issues with high chances of success.
20. I have perused the Draft Memorandum of Appeal marked *Annexure "IR4"* to the affidavit of Isaac Ruto in support of the application. As stated by the Court in the ***Principal Secretary, Ministry of Education case (supra)***, an arguable appeal need not be one that will necessarily succeed; it is sufficient if it raises a bona fide issue deserving consideration by the appellate Court.

21. It is my considered view that the draft memorandum of appeal raises genuine and arguable issues worthy of consideration by the Court of Appeal, and is not frivolous.
22. On the second principle for grant of orders for stay that the Applicant must prove that the appeal would be rendered nugatory should the court not grant the orders sought, I am persuaded that this requirement has been satisfied. The Applicant has demonstrated that unless stay is granted, the Claimant is likely to proceed with execution, thereby exposing the Applicant to substantial financial liability.
23. Under **Order 42 rule 6(2)** of Civil Procedure Rules, the Applicant is required to provide *“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.”*
24. For the foregoing reasons, I am satisfied that the Applicant has met the legal threshold for the grant of an order of stay of execution pending appeal. Accordingly, the application dated 29th January 2025 is hereby allowed in terms of prayer (d) thereof, on condition that the Applicant shall provide

security by way of deposit of one-half (50%) of the decretal sum in Court within thirty (30) days from the date hereof.

25. Failure to comply with the above condition shall automatically render the stay orders vacated, and the Claimant shall be at liberty to execute.
26. The costs of this application shall in any event be borne by the Applicant.

**DATED, DELIVERED AND SIGNED
THIS 16TH DAY OF OCTOBER, 2025.**

**M. ONYANGO
JUDGE**