



**Babs Security Services Limited v Mwita (Appeal E035 of 2025)
[2025] KEELRC 2879 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2879 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E035 OF 2025
DKN MARETE, J
OCTOBER 22, 2025**

BETWEEN

BABS SECURITY SERVICES LIMITED APPLICANT

AND

NICHOLAS MWASI MWITA RESPONDENT

RULING

1. This is an application dated 7th February, 2025. It seeks orders of stay of execution of the judgement of court dated 31st May, 2024 and all consequential processes thereto. This includes any attachments pending hearing and determination of this application. It also seeks an extension of time to file appeal against the said judgement.
2. The application is based on grounds that on 31st May, 2024, a default judgement was entered against the applicant for failure to file its defence. The failure to enter this defence was an inadvertent mistake by the applicant's former counsel who had taken instructions to sole enter appearance and file defence on behalf of the Respondent.
3. The applicant further avers that on 31st January, 2025, the respondent was visited by Becky Auctioneers who proceeded to issue a proclamation notice to the satisfaction of the decree of this court dated 19th September, 2024. The applicant fears that they would be condemned unheard if the execution process proceeds thereby occasioning irreparable damage and loss.
4. Further, the applicant maintains that they have a strong defence raising triable issues and it is in the interest of justice that time be extended so as to file this appeal out of time with a view to defending the claim and having the matter be determined on his merit.
5. Again, the applicant argues that the mistake of their former counsel should not be visited upon it. The lack of effective communication by the former counsel and his failure to attend court at all material times together with a failure to file a defence resulted in the ex parte hearing and default



judgement herein. This application is made in good faith and there is no prejudice that would befall the Respondent, or at all. Besides, the applicant is prepared to comply with any reasonable and equitable conditions imposed by the court in approving the application.

6. The Respondent opposes the application. It is their case that upon instructions, they filed the suit on the subject matter of this application which elicited a memorandum of appearance dated 10th June, 2021. The matter proceeded for hearing on 24th February, 2022 and on or about the time the court was about to render judgement, the Respondent through the firm of Macharia Gakaria Advocate who had entered appearance in the matter filed an application seeking to arrest the judgement and be allowed to participate in the matter. This was vehemently opposed bearing the Respondent's character in other matters we were handling together where they would come and seek intervention in the eleventh hour.
7. The court moved on to allow the application conditionally which conditions the Respondent never adhered to forcing us to move the court to have it certify that the orders granted were not complied with and thereby setting a judgement date. These orders had allowed the Respondent to file defence in a ruling dated 31st May, 2022 which was not honoured and therefore the present application and appeal are a waste of time and precious judicial time besides being an outright futility.
8. Other delimiting factors against the application are; The matter was heard on 1st February, 2022 and the Respondent's submission came in on or about 21st February, 2022 with a judgement date of 28th February, 2022 which did not occur. Judgement was finally delivered on 31st May, 2024 and on 26-09-2024, the applicant instructed another firm who did not come on record but proceeded to obtain stay orders in the matter through an application dated 26-09-2024. The application dated 24-09-2024 sought similar orders of defending the matter as had been granted earlier by court and which orders had not been utilised by the applicant. The application dated 18-12-2024 declined the applicant's application to have the judgement set aside and have the matter proceed after filing defence has not been challenged to date and still stands. It is strange that the Applicant now comes in seeking the same orders of court in an appeal. That the orders sought in this application seek to set aside a judgement and allow filing of defence through an appeal of the judgement whereas an application to this extend was filed and dismissed with regards to the same prayers. The trial court acknowledged that this application is res judicata, the same issues having been raised and determined in earlier proceedings. That litigation has to come to an end and the applicant should be so counselled.
9. The Applicant in their written submissions dated 6th March, 2025 submits in reiteration of their case for the application.
10. The Respondent however filed their written submissions dated 25-03-2025 in reiteration of the opposition to the application. They raise an affirmative answer for issues and determination which are as follows;
 - i. Whether the firm of Dennis Gicheru Wanjiru is properly on record before this court.
 - ii. Whether the applicant has given sufficient reasons for filing an appeal out of time.
 - iii. Whether the applicant has given sufficient grounds for stay of execution.
 - iv. Whether a filing of a similar application before the trial court impedes the current application.
11. The Respondent comes up with a convincing analysis of the above and concludes as follows; The firm of Dennis Gicheru Wanjiru Advocates are not properly on record before this court having failed to obtain leave to come on record. The present application has been filed by strangers and does not deserve judicial consideration. The intended appeal seeks the same orders as in an application filed earlier before the trial court and therefore amounts to an abuse of the process of court and should be dismissed with



costs. That the application for leave to file an appeal out of time is not merited as no genuine and valid reasons have been adduced to explain the delay given the history of the matter post judgement. The prayer for stay of execution is hollow and has been supported by its key ingredients. This application lacks merit and is material for dismissal.

12. I agree with the Respondent. This application is wanting in many fronts. It lacks merit and is not adequately grounded to stand the test. This court is not compelled to exercise its discretion in favour of the application. It is not merited.
13. I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF OCTOBER 2025.

D. K. NJAGI MARETE

JUDGE

Appearances;

1. Mr. Gicheru instructed by Dennis Gicheru Wanjiru & Company Advocates for the Applicant.
2. Mr. Wetaba instructed by Wetaba, Were & Associates Advocates for the Respondent.

