



Chepkoech & 3 others (Suing as Former Members of the 1st Respondent, for themselves on Behalf of 143 other Former Members of the Union) v Kenya Plantation and Agriculture Workers Union (KPAWU) (Employment and Labour Relations Petition E012 of 2024) [2025] KEELRC 2870 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2870 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
EMPLOYMENT AND LABOUR RELATIONS PETITION E012 OF 2024
AN MWAURE, J
OCTOBER 22, 2025**

BETWEEN

**SARAH CHEPKOECH 1ST PETITIONER
GLADYS AYUMA ITABOLWA 2ND PETITIONER
SIMON SIMIYU 3RD PETITIONER
JANES OKETCH 4TH PETITIONER
SUING AS FORMER MEMBERS OF THE 1ST RESPONDENT, FOR
THEMSELVES ON BEHALF OF 143 OTHER FORMER MEMBERS OF THE
UNION**

AND

**KENYA PLANTATION AND AGRICULTURE WORKERS UNION
(KPAWU) RESPONDENT**

RULING

(Suing as former members of the 1st Respondent, for themselves on behalf of 143 other former members of the Union)

Introduction

1. The Respondent/Applicant filed a Chamber Summons dated 28th August 2025 under Certificate of Urgency alongside with a Notice of Motion with the same date seeking the following orders that:
 1. Spent



2. Pending the hearing and determination of this Application, this Honourable Court be pleased to issue an interim order of stay of execution of the Judgment and/or decree delivered on 11th July 2025 in Kericho ELRC No. E012 of 2024- Sarah Chepkoech Gladys & Others v Kenya Plantation and Agricultural Workers & Another.
3. This Honourable Court be pleased to grant a stay of execution of the Judgment and/or delivered on 11th July 2025 in Kericho ELRC No. E012 of 2024- Sarah Chepkoech Gladys & others v Kenya Plantation and Agricultural Workers & another, pending the hearing and determination of the application for orders for stays of execution currently pending before the Court of Appeal in Nakuru Civil Appeal(Application) No. E136 of 2025- Kenya Plantation and Agricultural Workers Union v Sarah Union v Sarah Chepkoech Gladys & Others.
4. In the alternative, this Honourable Court be pleased to extend the orders of stay of execution granted on 11th July 2025 of the Judgment and decree delivered on 11th July 2025 in Kericho ELRC No. E012 of 2024- Sarah Chepkoech Gladys & others v Kenya Plantation and Agricultural Workers & another, pending the hearing and determination of the application for orders of stay of execution currently pending before the Court of Appeal in Nakuru Civil Appeal (Application) No. E136 of 2025- Kenya Plantation and Agricultural Workers Union v Sarah Chepkoech Gladys & others
5. The costs of this application should be provided for.

Supporting affidavit

2. The application is supported by the affidavit of Thomas Kipkemoi, the Respondent/Applicant's Deputy General Secretary.
3. On 11th July 2025, the Respondent/Applicant avers that this Honourable Court ordered that it pay Kshs.400,000 each to 147 former members, totalling to Kshs.58.8 million, with 14% annual interest and costs.
4. The Respondent/Applicant sought and was granted a 30 days stay of execution to file an appeal and a formal stay application.
5. The Respondent/Applicant avers that a Notice of Appeal was filed on 22nd July 2025, and Oraro & Co. Advocates were engaged to represent it.
6. The Respondent/Applicant avers that a Record of Appeal and stay application was filed on 31st July 2025, and Justice J.M. Mativo certified the Stay Application as urgent on 15th August 2025 and issued procedural directions.
7. Despite the stay, the Respondent/Applicant avers that Petitioners/Respondents initiated execution steps, including filing and taxing a Bill of Costs at Kshs. 5.14 million, extracting a Certificate of Costs, and serving warrants and proclamations of attachment.
8. The Applicant/Respondent argues that these actions threaten to render the appeal and stay application nugatory and seeks urgent intervention from the court, expressing willingness to comply with any reasonable conditions.

Petitioners/Respondent's Preliminary Objection and Replying Affidavit

9. In opposition to the application, the Petitioners/Respondents filed a preliminary objection dated 1st September 2025 on the following grounds that:



1. The unsigned and unauthenticated application dated 28th August 2025 is fatally/incurable defective, bad in law, incompetent, and misconceived.
2. The application herein is sub-judice since there exists a similar application pending before the Court of Appeal in Nakuru Civil Application No. E136 of 2025 filed on 31st July 2025, and which is pending determination by the Court of Appeal.
3. The application herein thus offends the provision of Order 22 Rule 22(1) and Order 42 Rule 6 as a similar application be presented concurrently before the trial court and the Appellate Court.
4. The application herein also offends the direct provisions of Order 2 Rule 16 that every pleading shall either be signed by the Party themselves, by an Advocate or by a recognized agent of the Party
5. The applicant herein is totally abusing the court process by filing numerus similar applications before different courts with the aim of forum shopping for orders of stay instead of settling the decretal sum awarded by court
10. In a replying affidavit objection sworn by Sarah Chepkoech, dated the same date as the preliminary objection, avers that the application in question has been deemed incurably defective and an abuse of the court process by the advocates on record.
11. The Petitioners/Respondents aver that the application is sub judice, as a similar application is already pending before the Court of Appeal in Nakuru Civil Application No. E136 of 2025, with attached directions from that court.
12. The Petitioners/Respondents aver that filing identical applications in both the trial and appellate courts is a procedural abuse, and the applicant must choose one forum. Moreover, the application is unsigned and unauthenticated, rendering it legally inconsequential and warranting dismissal with costs.
13. Parties were directed to file their respective written submissions.

Petitioners/Respondent's submissions

14. The Petitioners/Respondent argued that a preliminary objection consists of a pure point of law which, even if raised outside the pleadings, can potentially dispose of the entire suit. This includes challenges to the court's jurisdiction, claims barred by limitation, or assertions that the dispute should be referred to arbitration as established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distribution Ltd* (1969) EA 696.
15. In *Heritage Insurance Company Limited v Patrick Kasina Kisilu* [2015] KEHC 1039 (KLR), the court stated that the sub judice rule under Section 6 of the *Civil Procedure Act* mandates that courts must stay proceedings when a similar suit or application is already pending before a competent court. This principle, along with res judicata under Section 7, aims to prevent duplicative litigation and uphold judicial efficiency. Courts have consistently held that filing multiple applications on the same subject matter, especially when relief has already been granted, refused, or dismissed for non-appearance, is an abuse of process unless proper reinstatement procedures are followed. Even in appellate courts, such applications must adhere to these statutory and common law principles, ensuring that justice is not undermined by repetitive or parallel filings.



16. The Petitioners/Applicants argue that the 1st Respondent's application dated 28th August 2025 constitutes a gross abuse of court process and should be dismissed with costs. In *Menany Sacco Society Ltd v Robert Muriuki Gitonga & Another* [2018] KEHC 8388 (KLR), the court cited the case of *Twaha v Abdalla & 2 others* [2015] KESC 20 (KLR), where the Supreme Court emphasized that a motion pending in the Court of Appeal must run its full course and cannot be pursued simultaneously in another forum. Similarly, in *Rajab v Kaur & Another* [2025] KECA 40 (KLR), the Court of Appeal reiterated the sub-judice principle under section 6 of the [Civil Procedure Act](#), warning against multiplicity of suits that burden judicial resources.
17. The Petitioners/Respondents further relied on *Satya Bhama Gandhi v DPP & 3 Others* [2018] KEHC 6100 KLR, which outlines various forms of abuse, including forum shopping, filing multiple actions on the same subject matter, and seeking similar reliefs in different courts.
18. Additionally, Petitioners/Respondents submitted that the application is challenged for being unsigned and unauthenticated, violating Order 2 Rule 16 of the Civil Procedure Rules. The Petitioners relied on the case *Shah v County Government of Trans Nzoia & Another* [2025] KEELC 1028, where the court cited the case of *vipin Maganlal Shah & Another v Investment & Mortgages Bank Ltd & 2 Others* [2001] eKLR, the court stated that unsigned pleadings are nullities with no legal effect. The court also cited the case of *Regina Kavenya Mutuku & 3 Others v United Insurance Co Ltd* [2002] eKLR reinforces that a signature authenticates a pleading, and without it, the document is legally void.
19. In conclusion, the Petitioners/Respondents assert that filing similar applications in courts of concurrent jurisdiction and submitting an unsigned document violates procedural rules and amounts to an abuse of the judicial process.
20. The Petitioners/Respondents urge the court to strike out the application with costs.
21. The Respondent/Applicant did not file written submissions.

Analysis and determination

22. The court has considered the application, supporting affidavit, preliminary objection, replying affidavit and submissions on record; the issue for the determination is whether the preliminary objection is merited.
23. The court reiterates the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distribution Ltd* (supra), which has been elaborated in the earlier part of this ruling.
24. Section 6 of the [Civil Procedure Act](#) provides as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”
25. Order 42 Rule 6(1) of the Civil Procedure Rules provides as follows:

“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.”

26. In *Speaker of the National Assembly & another v Senate & 12 Others* [2021] KECA 282 (KLR), the Court of Appeal cited the Supreme Court case in *Kenya National Commission on Human Rights v Attorney General, Independent Electoral & Boundaries Commission & 16 Others* [2020] eKLR had occasion to pronounce itself on the doctrine of sub judice, thus;

“The term ‘sub judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the court or judge for determination.” The purpose of the sub judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter to avoid abuse of the court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of sub judice must therefore establish that: there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.’

In other words for the sub judice rule to apply, the conditions which must be met can be summarized as: i) The matter in issue must be directly and substantially in issue in a previously instituted suit or proceeding between the same parties; or, ii) The matter in issue must be directly and substantially in issue in a previously instituted suit or proceeding between parties under whom they or any of them claim, litigating under the same title, and iii) where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

27. In this instant case, this Honourable Court granted 30 days stay of execution on 11th July 2025, and the Respondent/Applicant proceeded to appeal the decision of this court to the Court of Appeal in Nakuru Civil Application No. E136 of 2025. At the same time, the Respondent/Applicant applied for a stay of execution of the said judgment in the aforesaid Court of Appeal on 1st August 2025. Justice Mativo gave directions to the said application and matter was pending a hearing date of the said stay of execution application.
28. In the meantime, on the 28th August 2025 the Applicant filed this application which has the same parties and same prayers.
29. The current matter is sub judice, as the very same prayers were already requested in the subsequently lodged appeal in Nakuru the Civil Application No. E136 of 2025 and the Appellate court had given directions. The parties in the two applications are the same. The court finds it unacceptable for the Applicant to file similar applications in different courts, while this court is reaffirming that it no longer has jurisdiction over the matter following the appeal in the Apex Court.
30. As held in the already cited case of *Speaker of the National Assembly -vS- Senate & 12 Others* (Supra) the court explained clearly the purpose of sub judice which is to “stop filing of multiplicity of suits between the same parties or those claiming under them over the same subject matter to avoid abuse of



the court process and diminish the chances of courts with competent jurisdiction issuing conflicting decision over the same matters.”

31. In view of the foregoing, the court holds the preliminary objection dated 1st September 2025 raises issues of law and is indeed merited. The same is therefore granted as prayed.

32. Each party will meet their costs of this application.

Orders accordingly.

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

ANNA NGIBUINI MWAURE.

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

