



I & M Bank Limited v Patel t/a Akshar Ventures & another (Miscellaneous Application E007 of 2025) [2025] KEELRC 3044 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 3044 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
MISCELLANEOUS APPLICATION E007 OF 2025
MA ONYANGO, J
OCTOBER 29, 2025**

BETWEEN

I & M BANK LIMITED APPLICANT

AND

RAJESH PATEL T/A AKSHAR VENTURES 1ST RESPONDENT

MICHAEL ANDIBA MABINDA 2ND RESPONDENT

RULING

1. The application herein is dated 20th March, 2025. The Applicant seeks orders that: -
 - a. The Application be certified urgent and service be dispensed with in the first instance.
 - b. That this Honourable Court be pleased to extend the prescribed time for filing the appeal.
 - c. Pending the hearing and determination of the instant Application inter partes the Honourable Court be pleased to issue a temporary order for stay of execution of the Garnishee Order Absolute made on 22nd August, 2024 and issued on 18th February 2025.
 - d. Pending the hearing and determination of the Appeal the Honourable Court be pleased to issue a temporary order for stay of execution of the Garnishee Order Absolute made on 22nd August, 2024 and issued on 18th February 2025.
 - e. That the Honorable Court be pleased to grant such other and/or further orders as may be necessary to meet the ends of justice.
 - f. Costs of this Application to abide the outcome of the Appeal.
2. The application is made under Rules 18 and 21 of the *Employment and Labour Relations Court Act*, 2011 and Article 159 of *the Constitution* of Kenya, 2010.



3. The application is supported by the grounds in support thereof and the affidavit of Andrew Muchina, the Senior Legal Manager of the Applicant.
4. In the grounds in support of the application and in the affidavit of Andrew Muchina the Applicant states as follows:
 - a. The 2nd Respondent, as the decree holder in Eldoret MCELRC No.E155 of 2021-Michael Andiba Mabinda v. Rajesh Patel T/A Akshar Ventures & I&M Bank Limited, sought to execute a decree of Kshs. 758,650.57, arising from a judgment delivered in his favor on 23rd January 2023. The warrants of attachment issued on 14th June 2024 to Igare Auctioneers were returned unexecuted.
 - b. Consequently, the 2nd Respondent initiated garnishee proceedings through a Notice of Motion Application dated 17th July 2024, seeking to attach funds in the 1st Respondent's account number 0701117001810, domiciled at the Appellant's Eldoret Branch.
 - c. Upon ex parte consideration of the application, the trial court directed the 2nd Respondent to serve the Appellant and the judgment debtor. On 22nd July 2024, the Appellant was served with the application and a hearing notice of the same date, inviting it to appear in court on 30th July 2024 for inter partes hearing. At this stage, the court had not yet issued a Garnishee Order Nisi.
 - d. In response to the Application, the 1st Respondent/Judgement Debtor filed a Replying Affidavit demonstrating his willingness to settle the decretal sum in installments.
 - e. When the Application came up for inter partes hearing on 30th July 2024, the court file could not be traced thus was not presented before the trial court. This prompted the 2nd Respondent to request for re-certification of the Application dated 17th July 2024 by filing a Certificate of Urgency dated 31st July 2024.
 - f. Consequently, the trial court fixed the matter for mention on 22nd August 2024 for purposes of taking directions on the 2nd Respondent's Application dated 17th July 2024 and further directed the 2nd Respondent to effect service.
 - g. On 9th August 2024, the 2nd Respondent served the Appellant with a Mention Notice of even dated and filed an Affidavit of Service dated 9th August 2024.
 - h. At this stage, the trial court had neither issued a Garnishee Order Nisi nor given any directions on the application. Consequently, the Appellant had no legal basis to place a debit freeze on the 1st Respondent's account.
 - i. When the matter came up for mention on 22nd August 2024, the trial court, on the oral application of the 2nd Respondent's counsel, granted prayer 3 of the application dated 17th July 2024, effectively issuing a Garnishee Order Absolute. This order required the Appellant to pay the 2nd Respondent the decretal sum of Ksh.758,650.67/=.
 - j. Aggrieved by the court's orders, the Appellant filed an application dated 27th August 2024, seeking, among other reliefs, an order to set aside or discharge the orders issued on 22nd August 2024, as well as an interim stay of execution. The application was premised on the grounds that the orders were irregular and that the Appellant's account held only Ksh.5,552.71, rendering them unable to satisfy the impugned decree.



- k. Upon considering the application in chambers, the trial magistrate issued an order directing the Appellant to serve the application and scheduled it for inter partes hearing on 19th September 2024. The Appellant duly effected service of the said directions and application upon the 2nd Respondent on 4th September 2024.
 - l. On 19th September 2024, the court directed the parties to canvas the application by way of written submissions and fixed the matter for mention on confirm compliance on 3rd October 2024. The Appellant filed written submissions dated 1st October 2024 in support of the Application. The submissions were electronically filed on 2nd October 2024 at 13:43 p.m. through the Judiciary E-filing System, with the filing fees being zero-rated.
 - m. The court scheduled the ruling on the Application for 29th October 2024. However, the ruling was not delivered on the appointed date, and the court informed the parties that it would be delivered on notice.
 - n. Subsequently, on 3rd February 2025, without prior notice to the parties, the trial magistrate delivered a ruling dismissing the Application with costs awarded to the 2nd Respondent.
 - o. Aggrieved by the said ruling, and intends to appeal against the entire decision as demonstrated in the draft Memorandum of Appeal dated 20th February 2025, seeking to set aside the impugned decision.
 - p. I am aware that the Applicant inadvertently filed the appeal in the High Court under Eldoret HCCA No. E030 of 2025-I&M Bank Limited v. Rajesh Patel T/A Akshar Ventures & Another. Upon discovering the error, the Applicant successfully applied to withdraw the appeal on 20th March 2025.
 - q. The Applicant now seeks an extension of time to file the appeal. I am advised by the Advocates on records for the Applicant that the two-week delay in filing the appeal beyond the 30-day period prescribed in law is, in the circumstances, both excusable and justifiable.
 - r. I am aware that the 2nd Respondent has commenced the process of execution. By a letter dated 5th February 2025, the 2nd Respondent requested the court to issue warrants of attachment and sale in favor of Seventy Seven Auctioneers for execution against I&M Bank Limited, the Appellant herein. Additionally, the 2nd Respondent sought the re-issuance of a Garnishee Order Absolute. On 19th February 2025, the 2nd Respondent served the Appellant with a Garnishee Order Absolute issued on 18th February 2025.
 - s. Furthermore, the 1st Respondent (customer's) account is not sufficiently funded to liquidate the sums sought by the 2nd Respondent thus should the Appellant be compelled to settle the said enormous decretal sum and the 1st Respondent's ability to refund is uncertain, execution may render the appeal nugatory. As at 25th February, 2025, the account had a balance of Kshs. 98,999.33/=.
5. The application is opposed by the Respondent through the replying affidavit of Michael Andiba Mabinda, the 2nd Respondent in which he deposes that:
- a. That I am the 2nd respondent in this appeal hence competent to swear this affidavit.
 - b. That I have read the application dated the 20th March, 2025 and wish to reply.



- c. That on 22nd August, 2024 a garnishee order absolute was made against the applicant herein in favour of the 2nd respondent in Eldoret CM. ELRC. No. E155 of 2021.
 - d. That the applicant applied to the court to set-aside the order and in a ruling delivered on the 3rd February, 2025 the application was dismissed with costs. Annexed is the ruling marked as “A”.
 - e. That the applicant has now moved this court seeking to extend time without giving any particulars as to the date of the decision and even it does not quote the lower court file particulars from which the said decision was made.
 - f. That this court has no jurisdiction to extend time in respect of a decision whose date, particulars and origin are not cited in the prayer on the motion.
 - g. That this court has also no jurisdiction to extend time to appeal against the decision in respect of the dismissal of the application to set-aside the garnishee order absolute as made by the Magistrate since no automatic right of appeal exists to this court in respect of garnishee proceedings.
 - h. That the applicant ought to seek leave to appeal against the decision prior to moving this court intandem with order 43 of the Civil Procedure Rules, 2010 and section 75 of the Civil Procedure Act, Cap.21.
 - i. That in the absence of an order granting leave to appeal this motion ought to be struck out with costs to the 2nd respondent.
 - j. That also the court is bereft of jurisdiction to entertain an application for stay of execution in a miscellaneous application as rule 21 (2) of the Employment and Labour Relations Court (Procedure) Rules, 2024 confers the jurisdiction to entertain an application for a stay of execution only when filed in an appeal file.
 - k. That in any event the decision that the applicant seeks a stay of execution is that leading to dismissal of its application to set-aside the garnishee order absolute which is a negative order.
 - l. That it is trite law that the court is devoid of jurisdiction to grant a stay of execution of a negative order.
 - m. That the court cannot stay the execution of the order made on the 22nd August, 2024 as no appeal has been filed against it before this court.
 - n. That the applicant has not advanced any circumstances to justify an extension of time to file an appeal to warrant the court to invoke the jurisdiction.
6. Directions were taken that the application be disposed of by way of written submissions. Mr. Mua Wambua, counsel for the 2nd Respondent opted to rely fully on the 2nd Respondent’s replying affidavit and informed the court that he was not filing submissions. The Applicants submissions, which I have considered, are dated 2nd May, 2025.

Applicant’s Submissions

7. The Applicant submitted under the following heads:
 - a. Whether the court should grant an extension of time for filing of the appeal
 - b. Whether this Honourable court should issue a temporary order of stay of execution pending hearing and determination of the appeal



8. On the first issue the Applicant submits Rule 18 of the Employment and Labour Relations Court (Procedure) Rules provides for extension of time for filing an appeal in this court. That the Applicant inadvertently filed the appeal in the High Court under Eldoret HCCA No. E030 of 2025 – I&M Bank Limited v Rajesh Patel T/A Akshar Ventures & another. That upon realizing this jurisdictional error the Applicant promptly withdrew the appeal and filed a fresh appeal in this court on the same day.
9. Relying on the decision in *Singh v Awa* (Employment and Labour Relations Appeal E041 OF 2024) [2025] KEELRC 26 (KLR) where the court decided on an issue with similar facts, the Applicant submitted that the statutory 30-day period for lodging an appeal ran from 3rd February to 5th March, 2025. That the instant application was lodged on 20th March, 2025, merely two weeks after the lapse of the prescribed period.
10. The Applicant submitted that this court has unfettered discretion to grant the orders sought, the Applicant having given reasonable explanation for the delay.
11. It is submitted that the Applicant has satisfied the threshold for leave to appeal out of time.
12. On the second issue whether the court should grant stay of execution the Applicant submitted that stay of execution is provided for in Rule 21 of the Employment and Labour Relations Court (Procedure) Rules. That in the case of *Singh v Awa* (supra) the court held that Order 42 Rule 6(2) applied to stay of execution in this case.
13. It was submitted that the Applicant stands to suffer substantial loss as a warrant of execution has already been issued at the instance of the 2nd Respondent, that the account of the 1st Respondent is insufficiently funded to settle the decretal sum and the Appellant will be compelled to satisfy the entire amount which the 1st Respondent will ultimately be unable to refund. That this would render the appeal nugatory.
14. The Applicant relied on the decision in *Equity Bank Limited v Francis O. G. Matete & another* where the court held that “if the Respondent were permitted to proceed with execution against the assets of the garnishee, the garnishee is likely to suffer substantial loss”.
15. It is further submits that if the orders sought are not granted, the Applicant who is not a party to the suit will be compelled to pay the decretal sum without being afforded an opportunity to be heard, in violation of the principles of natural justice, while the culpable party is allowed to rum scot-free and avoid its obligations.

Analysis and Determination

16. I have considered the application together with the grounds in support thereof. I have further considered the affidavit of the 1st Respondent and submissions of the Applicant. The issues that arise for determination in my view are the following:
 - a. whether this court has jurisdiction to grant the orders sought by the applicant
 - b. whether the applicant is entitled to the orders sought in the application.
17. The first issue for determination is whether this court has jurisdiction to determine the application. It was the position of the Respondent that this court has no jurisdiction to extend time in respect of a decision of dismissal of an application to set aside the garnishee order.
18. A garnishee order is made under Order 23 of the Civil procedure Rules.



19. Order 43 of the Civil Procedure Rules provides for circumstances when appeals lie as of right from orders as follows:

[Order 43, rule 1.] Appeals from Orders.

1. An appeal shall lie as of right from the following Orders and rules under the provisions of section 75 (1) (h) of the Act—

(l) Order 23, rule 7 (trial of claim of third person in attachment of debts);

20. Order 23 rule 7 provides:

[Order 23, rule 7.] Trial of claim of third person.

7. After hearing the allegations of any third person under such order, as in rule 6 mentioned, or of any other person who by the same or any subsequent order the court may order to appear, or in case of such third person not appearing when ordered, the court may order execution for levying the amount due from the garnishee, together with the costs of the garnishee proceedings, or order any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person or make such other order as the court shall think fit.

21. A garnishee order is a claim under Order 23 Rule (7). Therefore, a right of appeal lies in respect of orders made in respect of garnishee orders as of right. This court therefore has jurisdiction to hear the instant application.

22. The next issue is whether the Applicant is entitled to an order extending time for filing appeal.

23. Rule 12 of the Employment and Labour Relations Court (Procedure) Rules provides for time of filing appeals as follows:

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 sub-rule (1), the appeal shall be filed within thirty days from the date the decision is delivered.

24. Rule 80 of the Employment and Labour Relations Court (Procedure) Rules provides:

80. The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court.

25. This court therefore has unrestricted discretion to extend time for filing appeals. Such discretion is of course, to be exercised judiciously upon the applicant persuading the court that there is justification to grant the extension of time. This was the import of the decision in *Singh v Awa* (supra) where the court stated

“In highlighting similar facts in *Singh v Awa* (Employment and Labour Relations Appeal E041 of 2024)[2025] KEELRC 26 (KLR), the Court in determining whether to extend time relied on the Supreme Court decision in *Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others*[2015]eKLR as decided in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014].

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and



whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”

The court went ahead to give underlying principles on extension some which are;

“a party who seeks 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; where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court; whether there will be any prejudice suffered by the respondents, if extension is granted; whether the application has been brought without undue delay.”

26. As submitted by the Applicant, it erroneously filed the appeal in the High Court but realized the error after the timelines for filing appeal had lapsed. It immediately filed the instant application 2 weeks after the time statutory lapse. It is my view that the Applicant expressed a genuine desire to appeal against the orders of the trial court and actualized the desire by taking action in filing the appeal, albeit in the wrong court. The error was corrected by withdrawing the appeal and filing the instant application immediately.
27. It is my view that the delay in filing the appeal has been adequately explained. It is further my view that the instant application was filed timeously, as soon as the error of filing in the wrong court was realized.
28. For these reasons I find that the Applicant is entitled to an order of extension of time to file appeal out of time.
29. The next issue is whether the Applicant is entitled to an order of stay of execution.
30. Rule 73 of the Employment and Labour Relations Court (Procedure) Rules provides as follows:
 73.
 - (1) The Registrar shall issue an order in execution of a decree.
 - (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.
31. Stay of execution pending appeal is provided for in order 42 rule 6(2) of the Civil Procedure Rules as follows:
 - (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. (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application. (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given. (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling. (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.



32. The instant appeal is not against a decree but an order. Order 42 Rule 6 is thus not applicable strictly. As has been stated above, this court has unfettered discretion to grant stay of execution upon such terms as are just.
33. In the instant application the Applicant stated that it is likely to suffer irreparable loss as execution may be levied against it by the 2nd Respondent against whom it may not be able to recover the decretal sum. It has further stated that the orders were made against it without being given an opportunity to be heard.
34. The Applicant being a Bank, it is my view that it would be capable of making good any orders against it should its appeal fail. It therefore does not need to deposit any security.
35. This court also agrees with the Applicant that it may suffer irreparable loss and the appeal may be rendered nugatory should stay not be granted. The 2nd Respondent has not indicated in its replying affidavit that it would be in a position to refund any money that may be paid by the Applicant should the appeal succeed
36. For these reasons I find that the Applicant is entitled to an order of stay of execution of the trial court's garnishee orders.
37. In the end, I find the application herein merited and make orders as follows:
 - i. The Applicant is hereby granted leave to file appeal out of time against the ruling of the trial court in Eldoret CMELRC No. E155 of 2021 delivered on 3rd February, 2025,
 - ii. The Memorandum of Appeal to be filed within 30 days.
 - iii. Each party shall bear its costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER, 2025.

M. ONYANGO.

JUDGE

