



REPUBLIC OF KENYA



**KENYA LAW**

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**Omoke t/a Morara Omoke Advocates v Board of Trustees Kenya Broadcasting Corporation [KBC] Staff Retirements Benefits Scheme (Miscellaneous Reference Application E002 of 2024) [2025] KEELRC 2894 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2894 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS REFERENCE APPLICATION E002 OF 2024**

**K OCHARO, J**

**OCTOBER 24, 2025**

**BETWEEN**

**BENMORARA OMOKE T/A MORARA OMOKE ADVOCATES .... APPLICANT**

**AND**

**BOARD OF TRUSTEES KENYA BROADCASTING CORPORATION [KBC]  
STAFF RETIREMENTS BENEFITS SCHEME ..... RESPONDENT**

**RULING**

1. When this matter came up for further directions on the respondent's application dated 4<sup>th</sup> July 2025, Counsel Mr. Nyaga for the Applicant law firm informed the Court that;
  - a. Lady Justice Keli had given directions for filing submissions for and against the application.
  - b. Prior to the directions, the Applicant Law Firm filed a Preliminary Objection dated 11th July 2025, and responded to the Respondent's application.
  - c. The Applicant has only filed submissions dated 12<sup>th</sup> October 2025 regarding the Preliminary Objection.
  - d. The Applicant Law Firm has lodged an application at the Court of Appeal, Application No. E444 of 2025, seeking to strike out the Notice of Appeal that was filed herein by the Respondent, which forms the basis of their application, and
  - e. The Court of Appeal has given directions in the application on the filing of submissions. The Applicant has filed his, while the Respondents have not filed theirs.
2. He submitted that the decision of the Court of Appeal on the application shall undoubtedly have a bearing on the viability or otherwise of the appeal. To avoid a multiplicity of proceedings, this



court should put a hold on the process of delivering, preparing and delivering a ruling on the instant application, pending the Court of Appeal's decision.

3. Counsel further requested that the temporary stay of proceedings order issued by Lady Justice Keli herein be lifted, as the order appears to be hindering the expeditious resolution of the taxation before the taxing officer, contrary to the direction provided by this court in its ruling on the reference.
4. On her part, Counsel for the Respondent, Ms. Impano, stated
  - a. That following directions for filing of submissions by Justice Keli, the parties filed their respective submissions.
  - b. The application before this court seeks, among other things, the admission of the Notice of Appeal out of time.
  - c. The proper forum to determine whether leave to file a Notice of Appeal out of time should be granted is this court. Once this court rules in favour of the instant application, the application at the Court of Appeal shall become moot.
  - d. Should this court decide to stay the preparation and delivery of its ruling on the application, then it should order a stay of the taxation process, pending the outcome of the Court of Appeal proceedings.
5. Counsel Nyaga responded that under rule 86 of the Court of Appeal rules, the Court of Appeal is seized of the jurisdiction to entertain an application for striking out the Notice of Appeal. Contrary to the Respondent's Counsel's submissions, the respondent's application before this court does not seek extension of time to file a Notice of Appeal out of time.
6. He further argued that the Court of Appeal declined an application for a stay of the implementation of the ruling of this court. The Court shouldn't give an order of stay as invited by the Respondent.
7. A stay of proceedings can only be granted if certain conditions, as outlined in Order 42 Rule 6 of the Civil Procedure Rules, are satisfied. The order is not given without the establishment of the conditions.

### **Determination**

8. In light of the submissions by both Counsel for the parties, a sole issue emerges for determination: what appropriate order(s) commend themselves to this court in the circumstances of this matter?
9. I have carefully considered the prayers sought in the respondent's application dated 4<sup>th</sup> July 2025, and more specifically, prayer one thereof, which seeks: -

- “ 1. That this Honourable court be pleased to enlarge time for the Applicant to file an application for leave to appeal out of time against the ruling of Hon. Justice Ocharo Kebira delivered on 30<sup>th</sup> April 2025 in Nairobi ELRC Misc. Case No. E002 of 2024.

Noting that the Respondent filed a Notice of Appeal herein, which is alleged to have been filed out of time and which the Applicant has sought to have struck out by the Court of Appeal, it is not difficult to conclude that the outcome of the application in the Court of Appeal will definitely have an impact on the instant application.

10. As the application before the Court of Appeal is substantially heard, prudence, produce, orderliness and tidiness demand that two parallel proceedings touching on the notice of appeal cannot be allowed



to run. As a result, I halt the process of preparation and delivery of the ruling on the application dated 4<sup>th</sup> April 2025 pending the outcome of the Court of Appeal proceedings.

11. Noting that Justice Jemimah Keli deliberately granted a stay on the taxation proceedings until 22nd September 2025, the spirit of this court's ruling, as correctly pointed out by Counsel for the Applicant, and the overriding objective of this court, I am not persuaded to extend the stay of the taxation proceedings before the Taxation Master. The taxation should proceed.
12. I have also considered whether or not there would be prejudice caused to the Respondent if the taxation proceedings were to proceed. I see no prima facie demonstration that there would be. If, at the end of the day, the taxation is completed and the application here for leave to appeal succeeds, and an appeal is filed, the respondent would legally have the right to apply for a stay of execution of the taxed costs pending the appeal.
13. By reason of the premises, this matter shall be mentioned on 9<sup>th</sup> February 2026, to check on the position of the Court of Appeal proceedings, and for further directions.
14. Order accordingly.

**DATED, SIGNED, AND DELIVERED THIS 24<sup>TH</sup> OCTOBER 2025**

**OCHARO KEBIRA**

**JUDGE**

