



Pamba v Kenya Hospital Association t/a Nairobi Hospital & another (Cause E614 of 2020) [2025] KEELRC 3166 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3166 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E614 OF 2020
S RADIDO, J
NOVEMBER 13, 2025**

BETWEEN

DR ALLAN PAMBA CLAIMANT

AND

**THE KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI
HOSPITAL 1ST RESPONDENT**

DR IRUNGU NDIRANGU 2ND RESPONDENT

RULING

1. The Court delivered judgment on 19 June 2025 in favour of Dr Allan Pamba (the Claimant) and on 15 July 2025, the Kenya Hospital Association (the Respondent) filed a Motion seeking orders:
 - i. ...
 - ii. ...
 - iii. Pending the hearing and determination of the intended appeal by the Respondents, there be a stay of execution of the judgment and decree delivered on 19th June 2025.
 - iv. The costs of the application be provided for.
2. The primary grounds advanced in support of the Motion were that the Respondents were aggrieved with the decision to award the Claimant Kshs 208,350,000/-; the Court granted an interim stay, and there was apprehension that the Claimant would execute upon the lapse of the stay; the Respondents stood to suffer substantial loss if execution were to proceed; the Claimant's means and sources of income were unknown and the Respondent would suffer irreparable harm if execution ensued and the Respondents were ready to abide with any conditions imposed by the Court.



3. When the Motion was placed before the Duty Judge ex-parte on 16 July 2025, the Court gave directions on the service, filing and exchange of responses and submissions.
4. The Respondents filed their submissions on 21 July 2025.
5. The Claimant filed a replying affidavit in opposition to the Motion on 22 July 2025. In the affidavit, the Claimant deponed that the Respondents' right of appeal did not override his right to execute the judgment; the application was meant to frustrate him; the purported grounds of appeal were speculative; the Motion was misconceived and that were the Court to allow the orders sought, then the full decretal sum should be deposited into a joint interest earning account.
6. The Claimant filed his submissions on 28 July 2025.
7. In the submissions, the Claimant urged that the firm of Hamilton Harrison and Mathews was not properly on record because it had not obtained leave of the Court to come on record after judgment.
8. The Claimant also submitted that the Respondents had not demonstrated that they would suffer substantial loss if the stay orders were not granted, nor that he was a person of straw.
9. Further, the Claimant urged that the Respondents had not offered security for the due performance of the decree and had exhibited indolence in moving the Court.
10. The Claimant cited *Nyaiera v Egerton University (2022) KEELRC 3775 (KLR)* to argue that since the Respondents had not placed before the Court a draft Memorandum of Appeal, the Motion was incompetent.
11. The Respondents filed a further affidavit and submissions on 29 July 2025. In the further affidavit, the Respondents introduced the 1st Respondent's financial statements for 2023 to demonstrate that it could pay any amounts as ordered by the Court.
12. The Respondents went on to assert in their further submissions that the Rules of this Court did not have a requirement to seek leave of Court for an advocate to come on record after judgment. The Respondents cited *Protein & Fruit Processors Ltd & Ar v Diamond Trust Bank Kenya Ltd (2015) KEHC 4433 (KLR)*.
13. On the challenge to Draft Memorandum of Appeal, the Respondents relied on Order 42 Rule 6 of the Civil Procedure Rules and *Mwinyi v Bhai & Ar (2023) KECA 12 (KLR)* to submit that it was not a requirement.
14. The Claimant filed a supplementary affidavit on 7 August 2025. The Claimant urged the Court to disregard the financial statements because they were for 2 years before the instant Motion.
15. Save for the Claimant's supplementary submissions, the Court did not grant any of the parties leave to file further submissions. In the interest of justice, the Court will consider all the materials placed before it.
16. The Court has considered the Motion, affidavits and submissions, even if extensive reference is not made to them.

Representation

17. The firm of Hamilton Harrison & Mathews did not secure the leave of the Court to come on record after judgment.



18. It is correct that the Employment and Labour Relations Court (Procedure) Rules, 2024, do not have a similar provision to Order 9 Rule 9 of the Civil Procedure Rules.
19. However, where the Rules of this Court have a lacuna, the Courts have borrowed from the Civil Procedure Rules to meet the ends of justice.
20. The firm of Hamilton Harrison & Mathews did not seek the indulgence of the Court to come on record.
21. It did not place before the Court any consent from the advocate previously on record for the Respondents. It did not place before the Court any formal instructions from the Respondents asking it to come on record.
22. The Claimant has not demonstrated any injustice, procedural or substantive, occasioned to him by the filing of the Motion by the firm of Hamilton Harrison & Mathews Advocate.
23. The Court will, in circumstances, find the failure to obtain leave of the Court by the firm of Hamilton Harrison & Mathews not fatal, and grant leave after the fact.
24. The principles for the grant of stay of execution are trite and need no legal reinvention.

Application made without delay

25. The Court delivered judgment on 19 June 2025, and the instant Motion was filed on 15 July 2025. The Respondents were granted 30-days interim stay to take instructions, and they moved the Court within the 30 days.
26. The Court finds there was no inordinate delay.

Substantial loss

27. What amounts to substantial loss has been the subject of judicial decisions over time.
28. In *Kenya Shell Limited vs. Kibiru* (1986) KLR 410, the Court of Appeal stated:

It is not sufficient by merely stating that the sum of Kshs Is a lot of money, and the applicant would suffer a loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement.
29. The Court is called to do a balancing act between the Respondents' right of appeal and the Claimant's right to enjoy the judgment granted in his favour.
30. The Claimant urged that the full decretal sum should be secured. The Respondents, on their part, indicated that they were ready to abide by any conditions imposed by the Court.
31. The Claimant was awarded Kshs 208,350,000/-. By any parameters, that is a huge sum of money which requires a massive capital chest to meet. A huge portion of the award was in respect to future lost income. Only Kshs 36,000,000/- was awarded for unfair termination of employment.
32. The Respondent did not show that the Claimant was a person of straw.



33. In the circumstances and balancing the competing rights, the Court will make appropriate orders on the question of security.

Security

34. To get a stay, a party ought to provide, or the Court may require a party to provide due security for the performance of a decree.

35. The Respondents indicated in their affidavits that they were willing to abide by any conditions imposed by the Court.

36. The Court is therefore of the view that the Motion be allowed.

Orders

37. The Court allows the Motion dated 15 July 2025 in the following terms:

i. A Stay of execution pending Appeal is hereby issued on the conditions:

(a) That the Respondents pay the Claimant Kshs 9,000,000/- forthwith.

(b) The Respondents provide security in the sum of Kshs 27,000,000/- to be deposited into a joint interest-earning account in the name of the advocates now on record within the next 21 days.

(c) The parties to agree on the Bank and branch where the deposit in (b) above should be deposited within 15 days.

(d) In default of agreement on bank, the amount to be deposited into Court by the 21st day from today.

38. For clarity, the firm of Hamilton Harrison & Mathews is granted leave after the fact to come on record.

39. Costs to abide the Appeal.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF NOVEMBER 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant J.A. Guserwa & Co. Advocates

For Respondents Hamilton Harrison & Mathews Advocates

Court Assistant Wangu

