

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. E258 OF 2025

(Before D. K. N. Marete)

IMPERIAL COLLEGE OF MEDICAL AND HEALTH SCIENCE.....APPELLANT
VERSUS
ANNETTE LANGAT CHEPKIRUI.....RESPONDENT

RULING

This is an application dated 7th August, 2025 seeking a stay of execution of a judgment delivered on 28th October, 2024 and the subsequent decree and of the same date. This also includes stay of a ruling delivered on 4th August, 2025 besides other orders of court on the matter as made by the trial court.

The application is premised on the ground that if the judgment of court is executed, the Appellant/Applicant would be prejudiced. The Applicant further avers that it has appealed against the whole of the ruling of court delivered on 4th August, 2025 and therefore should be awarded an opportunity to have it heard and determined on its merits. With an impending execution against this judgment and subsequence orders of court, the Appellant/Applicant stand to suffer loss and prejudice.

The Applicant faults the judgment, ruling and orders of the trial court for its procedural defects in that the process was irregular for lack of service to themselves. There was no physical or electronic service as alleged in the affidavit sworn on 4th March, 2024. This being the case, it becomes necessary that the stay of execution issues to curtail execution and therefore enable a hearing of the Applicant in satiation of Article 50 of the Constitution of Kenya, 2010.

The Respondent opposes the application for being unmeritorious, wasteful and an abuse of the process of court and resources. It is their argument that the trial court took in consideration all the relevant factors in arriving at the decision to dismiss the application seeking to set aside the judgment of court. Again, the face of memorandum of appeal lacks a single dose play an arguable appeal and the Appellant is only interested in wasting the court's time and deny the Respondent the fruits of their judgment. In any event, there is ample evidence that the Respondent was effectively served with summons and all other notices relating to the claim before the trial court.

Lastly, this application comes out as delay tactic of the part of the applicant. They have not offered any security and have even settled part of decretal sum and therefore this application is intended to defeat the Respondent's fundamental right which he has pursued successfully so far.

The Applicant in their written submission dated 22nd October, 2025 submits in favour of the application. On this he seeks to rely on the provisions of Order 42 rule 6(2) of the Civil Procedure Rules which provides for the legal ingredients for the issue of orders for stay of execution. He also relies on the authority of **Butt V Rent Restrictions Tribunal 1982 Klr 417** which established that stay must be issued so that an appeal may not be rendered nugatory in the event of a reversal of the decision of the trial court. This is besides the authority of **RWW v EKW [2019] eKLR** where it was observed that stay of execution pending appeal serves to preserve the subject matter in the dispute as the appeal continues. This shuts out a negation of the appeal should it come out successfully.

The Respondent submits that an application for stay of execution must persuade the court that it has an arguable appeal and also that if the application is not granted, the appeal would be rendered

nugatory. These two must be ably demonstrated to court. This was the determination of court in the authority of **Reliance Bank Limited vs Noriake Investments Limited [2002] 1EA 227 (CAK) Case No. 937 of 2002**. It is the Respondent's submission that in the instant case, the Applicant has not established any evidence of substantial loss that they are likely to suffer in the event of non-grant of the application for stay and therefore the application must fail.

This court observes that the Applicant has lodged an appeal against the ruling of the trial court which sought a review and setting aside the judgment, decree and subsequent orders of execution by the trial court. It also sought orders that the Appellant/Applicant be awarded unconditional leave to defend his claim as per the attached Memorandum of Response to the Amended Claim. It would appear that the trial court dismissed this application on grounds of massive dalliance of the part of the Applicant in the prosecution of the claim leading to a default judgment.

This court reluctantly wishes to grant the Applicant a second bite of the cherry. If indeed they are deserving of the appeal, this court does not wish to deny them an opportunity of laying down their case for appeal against the ruling of the trial court. In the circumstances, an exercise of discretion in their favour is made. This however, is conditional upon a deposit of the entire decretal amount in court within thirty (30) days of the ruling of court.

I am therefore inclined to allow the application with orders as follows;

- (i) Stay of execution be and is hereby issued against the judgment of the trial court delivered on 28th October, 2024 and the subsequence decree of the same date together with a ruling delivered on 4th August, 2025.

- (ii) The Applicant shall deposit the entire decretal sum in court within thirty (30) days of this ruling of court, and in default, execution to issue.

- (iii) Each party bears their costs of this application.

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Macharia instructed by Jesse Kariuki & Company Advocates for the Appellant/Applicant.

2. Mr. Nandi instructed by Lucheli Musundi & Company Advocated for the Respondent.