



**Oyatsi v Nzoia Sugar Company Limited (Cause 361(N) of 2009)  
[2025] KEELRC 3347 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3347 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 361(N) OF 2009  
CN BAARI, J  
NOVEMBER 27, 2025**

**BETWEEN**

**FRANCIS OYATSI ..... CLAIMANT**

**AND**

**NZOIA SUGAR COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. This ruling relates to the Claimant/Applicant's motion application dated 18<sup>th</sup> February, 2025, brought pursuant to Article 159 of *the Constitution* of Kenya and Rule 68(1)(g) of the Employment and Labour Relations Court (Procedure) Rules, 2024, and the Respondent's objection dated 21<sup>st</sup> June, 2025. Under the Motion, the Applicant seeks the following reliefs: -
  - a. That all further proceedings herein against the Claimant/ Applicant be stayed pending the hearing and determination of the Claimant's application dated 20th day of April 2021 in the Court of Appeal, so as to meet the ends of justice in the case or litigation.
  - (b) That the costs of the application be provided for.
2. Under the objection, the Respondent argues that the Court is functus officio, having rendered its judgment, which judgment was appealed in the Court of Appeal, and the Court of Appeal having equally rendered a judgment on the appeal, and this Court thus lacks jurisdiction to hear and determine the current Notice of Motion.
3. It further contends that under Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2024, this Court does not have jurisdiction to stay execution as sought.
4. It argues further that this Court is improperly moved, as Rule 68(1)(g) of the Employment and Labour Relations Court (Procedure) Rules, 2024, upon which the Notice of Motion herein is premised, does not give jurisdiction to this Court to grant the orders sought.



5. In the motion, the Applicant argues that the ends of justice as guaranteed under Article 159 of *the Constitution* guarantee that a person should not suffer a miscarriage or denial of justice and/or discrimination in the administration of justice. It is his position that the only pending proceedings in this case are execution proceedings by the Respondent to execute a Court of Appeal Order.
6. The Applicant argues that the Court of Appeal “judgment” being enforced by the Respondent is invalid, null, and void because it was never delivered in open court as required by Kenyan law, and that an application is already pending before the Court of Appeal seeking to recall, quash, or cancel the purported judgment on grounds that it is not a lawful judgment.
7. The Applicant states that the Respondent admitted that it obtained the impugned judgment from the Court of Appeal website, yet a different version has since surfaced, indicating that the appeal was dismissed. It is his position that although the Court of Appeal issued a notice stating judgment would be delivered on 7<sup>th</sup> June 2019, no judgment was actually delivered on that date, and no subsequent notice of delivery was ever served.
8. The Applicant contends that enforcing a decree based on a judgment that does not legally exist amounts to a miscarriage of justice, and allowing this would erode public confidence in the judicial system.
9. He states that it is necessary, for proper administration of justice, that the application challenging the judgment be allowed.
10. The Respondent opposed the application vide a replying affidavit dated 21st June, 2025. The Respondent states that the Motion is incompetent, defective, bad in law, and should be dismissed with costs. It is argued further that the Employment and Labour Relations Court (ELRC) lacks jurisdiction, since jurisdiction shifted to the Court of Appeal, which already delivered a judgment on 8<sup>th</sup> March 2019.
11. The Respondent contends that the Motion is brought under the wrong legal provisions; specifically, Rule 68(1)(g) of the ELRC Procedure Rules, 2024, which applies only to post-hearing orders and not post-judgment applications. It avers that, since judgment was already delivered by the ELRC in 2011, the case is past that procedural stage and the Motion therefore invokes a non-existent jurisdiction.
12. It is the Respondent’s position that the ELRC awarded the Claimant Kshs.13,646,271.00 in 2011, which the Respondent appealed, and because a stay was not granted, the Respondent paid the entire amount. It avers further that the Court of Appeal later set aside that award in 2019 and substituted it with Kshs.2,285,189.00.
13. The Respondent states that there are no pending proceedings in the ELRC capable of being stayed, and the Claimant has already unsuccessfully sought similar stay orders before the Supreme Court in Application E032 of 2023, which was dismissed.
14. The Respondent asserts that the Claimant has known since October 2019 that the Court of Appeal delivered judgment on 8th March 2019, and failed to take necessary steps such as verifying the court record, and has since failed to refund monies ordered by the Court following the Court of Appeal judgment and the ELRC’s ruling of 25 February 2022, which directed the Claimant to refund Kshs.8,061,000.00 plus interest.
15. The Respondent argues that the Claimant’s alleged “new information” about the judgment is false, that the current Motion is a scandalous, frivolous, and abusive attempt to delay lawful execution, and that the Claimant has been unresponsive for years.



16. It finally states that in line with Article 159(2) of *the Constitution*, the Notice of Motion should be struck out for being an abuse of court process, and the Respondent prays for dismissal of the motion with costs.
17. Parties filed submissions, and which have been duly considered.

### **Determination**

18. Two issues crystallize for determination: -
  - i. Whether this Court has jurisdiction to entertain the present Motion.
  - ii. Whether there are proceedings capable of being stayed.

### **Whether this Court has jurisdiction to entertain the present Motion.**

19. It is not in dispute that this court (differently constituted) delivered judgment in this matter in 2011. Parties are also in agreement that the Respondent appealed the decision, and the Court of Appeal delivered judgment on 8th March 2019, and that execution now arises from the Court of Appeal judgment, and not from any subsisting proceedings in the ELRC.
20. The law is settled that jurisdiction is everything, and without which, a court must down its tools. (See Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1.)
21. There is no doubt in my mind that once this court delivered its judgment and the matter proceeded on appeal, this Court became functus officio, save for matters relating to execution strictly arising from its own judgment, and not the Court of Appeal’s.
22. This Court cannot, in my view, stay or suspend execution of a Court of Appeal judgment or proceedings relating thereto, as only the Court of Appeal can stay itself.
23. For the reasons foregone, I find and hold that this Court lacks jurisdiction to stay proceedings relating to an appellate decree.

### **Whether there are proceedings capable of being stayed.**

24. The Claimant’s prayer is that further proceedings herein against him be stayed pending the hearing and determination of an application that he has filed before the Court of Appeal.
25. A stay of proceedings can only issue where there exists an active, substantive judicial process. In Global Tours & Travels Ltd HC Misc. App. No. 43 of 2000, Ringera J (as he then was) emphasized that a stay of proceedings is a drastic remedy, granted only where there are actual ongoing proceedings, a stay is necessary for the ends of justice, and where the Applicant has demonstrated a meritorious, arguable matter elsewhere.
26. In the instant case, the Respondent is only pursuing execution of the appellate court decree, and this Court already determined the Respondent’s recovery application on 25 February 2022, ordering that the Claimant refund Kshs.8,061,000 plus interest.
27. It is clear that what remains of this suit is merely an administrative role by the Registrar of the court, which is administrative, and not a proceeding capable of being stayed.
28. In the premise, I find the motion totally misconceived as there are no live proceedings before this Court that can be stayed.



29. Accordingly, the Notice of Motion dated 18<sup>th</sup> February 2025 is hereby dismissed in its entirety, with no orders on costs.

30. Orders accordingly.

**SIGNED, DELIVERED, AND DATED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Otieno h/b for Mr. Oyati for the Claimant/Applicant.

Mr. Wesonga present for the Respondent

Ms. Esther Sakwanda -C/A

