



REPUBLIC OF KENYA



**Shanta Gold Ltd t/a Saturn Resources Limited v Elizabeth (Appeal  
E064 of 2024) [2025] KEELRC 3341 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3341 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E064 OF 2024  
NZIOKI WA MAKAU, J  
NOVEMBER 27, 2025**

**BETWEEN**

**SHANTA GOLD LTD T/A SATURN RESOURCES LIMITED ..... APPELLANT**

**AND**

**AOKO ELIZABETH ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. F. Rashid (PM) delivered  
on 21st July 2025 in Kisumu CMCELRC No. E116 of 2025)*

**RULING**

1. The Respondent sued the Appellant before the Magistrate's Court at Kisumu vide a suit at the Kisumu CM's Court being Kisumu CMCELRC No. E116 of 2025. She sought the resolution of the dispute that included inter alia a claim for constructive dismissal. In response to the suit the Appellant raised a Preliminary Objection dated 13<sup>th</sup> June 2025, contending, inter alia, that the claim was time barred and that the claim disclosed no reasonable cause of action. In a ruling delivered on 21<sup>st</sup> July 2025 the Learned Magistrate dismissed the Preliminary Objection and directed that the matter proceeds to pretrial.
2. Aggrieved by that decision, the Appellant lodged a memorandum of appeal dated 6<sup>th</sup> August 2025 with this Court. Contemporaneously, it filed an application seeking stay of proceedings before the Trial Court pending the determination of the appeal. The Learned Magistrate, however, declined to stay the proceedings and affirmed the pre-trial directions.
3. Having been unsuccessful before the Trial Court, the Appellant/Applicant has now moved this Court by way of a Notice of Motion dated 25<sup>th</sup> September 2025, seeking stay of proceedings in the Magistrate's Court pending the hearing and determination of the appeal. It also prays for costs of the application. The Motion is premised on the grounds on its face and supported by the affidavit of Mr. Felix Odhiambo, the Appellant's Human Resource Officer. It is deposed that the appeal raises



weighty issues concerning limitation of actions, territorial jurisdiction, and the legal effect of a fixed-term contract that had lapsed. The Applicant contends that the Learned Magistrate’s ruling failed to properly address those issues, thereby exposing it to a full trial on an incompetent and legally unsustainable claim. It asserts that stay of proceedings is necessary to preserve the substratum of the appeal, avoid unnecessary expenditure of judicial resources, and ensure that the appellate process is not rendered nugatory.

4. The Applicant further submits that this Court is empowered under section 12 of the [Employment and Labour Relations Court Act](#) and Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016 to grant the orders sought. It additionally invokes Order 42 Rule 6 of the Civil Procedure Rules, asserting that the Motion was filed timeously; that substantial loss would ensue if the proceedings continue; and that it is willing to abide by any conditions imposed by the Court. It relies on Articles 159(2)(d) of [the Constitution](#) and sections 1A, 1B and 3A of the [Civil Procedure Act](#) to urge the Court to administer substantive justice and prevent abuse of the court process.
5. The Respondent opposed the Motion through a replying affidavit sworn on 30<sup>th</sup> September 2025. She averred that the Applicant had not demonstrated the substantial loss it claims it would suffer, contending instead that the application is a deliberate attempt to delay the hearing of the suit. She maintained that if any prejudice was to be suffered it would be by her as she would be denied timely access to justice. The Respondent further maintained that the appeal has minimal chances of success, the Trial Court having correctly found that the issues raised in the Preliminary Objection were mixed questions of law and fact requiring evidence. She argued that stay of proceedings is a drastic remedy to be granted sparingly and urged the Court to dismiss the application in order to uphold the constitutional principle under Article 159 of [the Constitution](#) against delayed justice. In view of the foregoing the Respondent averred that the balance of convenience tilted in her favour.
6. The application was canvassed by way of written submissions.

#### **Applicant’s Submissions**

7. The Applicant reiterated that it had satisfied the requirements of Order 42 Rule 6 of the Civil Procedure Rules, having filed the appeal without delay, demonstrated the substantial loss it stood to suffer if proceedings continued, and expressed its readiness to comply with any conditions the Court may impose. On timeliness, the Applicant submitted that the appeal was filed 16 days after delivery of the ruling, well within the 30-day period prescribed under section 79G of the [Civil Procedure Act](#). It relied on *Gerald Muli v Joseph Kanike & another* [2021] eKLR for the proposition that where an appeal is filed within the statutory period, no leave is required and no explanation for delay is necessary. It further cited the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] eKLR to underscore the argument that timeliness is central to the exercise of the right of appeal.
8. Concerning the question of substantial loss, the Applicant submitted that it stood to suffer significantly should the lower court proceedings continue. It contended that allowing the suit to proceed would render the appeal an academic exercise, and that if judgment were to be entered before the appeal is heard, it would be subjected to a process that ought not to have occurred, resulting in irreparable damage. To buttress its position, it drew attention to the issues raised in the appeal, including: whether the suit is time barred under section 90 of the [Employment Act](#); whether the cause of action is legally sustainable considering the Respondent’s fixed-term contract expired on 30<sup>th</sup> April 2025; whether the Trial Court had territorial jurisdiction given the Respondent’s location; and whether the pleadings disclosed any legally cognisable claim capable of supporting the reliefs sought. The Respondent further relied on section 12(3)(viii) of the [Employment and Labour Relations Court Act](#), which empowers the Court to grant interim orders necessary to preserve the substratum of an



appeal, and Rule 17(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 which allows the Court to make orders necessary to meet the ends of justice and prevent abuse of process. The Applicant also cited the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, which affirmed that interim relief serves to preserve the subject matter pending appeal.

9. On costs, the Applicant urged the Court to award them in its favour, arguing that the application became necessary only because the trial court declined to stay proceedings. It relied on section 21 of the *Civil Procedure Act*, the decisions in *Republic v Rosemary Wairimu Munene ex-parte Applicant* [2010] eKLR, *Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & another* [1972] EA 162 and *Kenya Sugar Board v Ndungu Gathini* [2013] eKLR.

### **Respondent's Submissions**

10. The Respondent submitted that the application was frivolous and intended merely to delay the hearing of the suit. She asserted that the Appellant had not demonstrated any substantial prejudice it would suffer, whereas she would continue to endure reputational harm, emotional distress, and financial hardship given that the claim touches on mishandling of sexual harassment, maternity, and postpartum discrimination among others. The Respondent further submitted that the Preliminary Objection was properly dismissed, the issues raised being mixed questions of law and fact requiring viva voce evidence.
11. While urging the Court not to grant stay the Respondent highlighted the Applicant's demonstrated pattern of delaying proceedings and disregard of court directions. She specifically drew attention to the filing and serving of the application herein on the eve of pre trial asserting that it was a sign of bad faith. In further opposition to the application the Respondent submitted that the supporting affidavit was incurably defective having been sworn before the authority to swear it had been issued. She pointed out that whereas the affidavit was dated 25<sup>th</sup> September 2025, the authority to swear was issued on 30<sup>th</sup> September 2025. In view of the foregoing, she urged the court to disregard the supporting affidavit.
12. With regard to the merits of the appeal the Respondent asserted that it had minimal chances of success. She submitted that the Applicant merely repeated the grounds raised in its Preliminary Objection, which the Trial Court had rightly dismissed. Concerning the Applicant's expressed willingness to comply with any conditions of the Court, the Respondent urged that given the Applicant's history of non-compliance with court orders it should be compelled to deposit security of costs. She further noted that the Applicant's change of name from Shanta Gold Limited to Saturn Resources Limited raised concerns of restructuring or asset transfer potentially aimed at defeating future execution, reinforcing the need for security.
13. In conclusion, the Respondent submitted that the Appellant had not met the legal threshold for stay of proceedings and prayed that the application be dismissed with costs. In the alternative, she prayed that should the Court be inclined to grant stay, the Applicant be ordered to deposit security for costs within a specified period.

### **Disposition**

14. The Court has considered the matters raised, the arguments and submissions of parties, the law and the authorities cited by parties in coming to this decision. The sole issue that falls for determination is the stay pending appeal sought by the Appellant. The Court has to consider a number of requirements before the grant of stay. These requirements are sequential. As held in the case of *Vishram Ravji Halai v Thornton & Turpin Civil Application No. Nai. 15 of 1990* [1990] KLR 365, the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered,



the High Court's jurisdiction to do so under Order 41 rule 6 of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay. If one fails to satisfy the substantial loss paradigm in the case, it matters not that there is an offer of security or that there would be substantial loss.

15. Further, the issue of what fits within the prism of preliminary objections was determined in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] E.A. 696. The Court held as follows:-

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop."

[Emphasis provided]

16. The Appellant before me had raised an objection that had mixed questions of law and fact requiring the adduction of evidence and it is my finding that the determination of the Learned Magistrate was correct. The appropriate course was to decline the invitation to determine mixed questions of law and fact on the basis of a preliminary objection. Quite clearly, an objection may be raised on account of jurisdiction and the like but it hardly bodes well to have the factual disputes being challenged on a preliminary point as was done in the Court below. As such, the Appellant misapprehended the remit of the objection it was competent to raise. Application dismissed with costs to the Respondent.
17. For avoidance of doubt, the proceedings before the Learned Magistrate are not fettered and the case can proceed to hearing on the merits.

Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

