



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ken Knit Kenya Limited v Amayayi (Appeal E031 of 2025)
[2025] KEELRC 3440 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3440 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E031 OF 2025
MA ONYANGO, J
NOVEMBER 27, 2025**

BETWEEN

KEN KNIT KENYA LIMITED APPELLANT

AND

LILIAN NDAKALA AMAYAYI RESPONDENT

RULING

1. Vide an application dated 26th May, 2025 the Appellant/Applicant seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That there be stay of execution of the Decree in Eldoret Chief Magistrates Court in Eldoret ELRC NO. E108 of 2022 Lilian Ndakala Amayayi Vs Ken Knit Kenya Limited pending the hearing and determination of this appeal.
 - e. That such other orders be made as are just and expedient.
 - f. Costs be in the cause.
2. The application is premised on the following grounds:
 - a. The Appellant has lodged an appeal against the entire judgment of the Lower Court delivered on 18th March 2025 being Eldoret Employment and Labour Relations Court Cause No. E031 of 2025.
 - b. This application has been brought expeditiously and without unreasonable delay.



- c. The Appellant will be prejudiced improperly and further the said appeal which is against the entire judgement will be rendered nugatory if stay of execution is not granted and the said appeal succeeds thereafter.
 - d. The Appellant is willing to abide by such reasonable stay terms as the court may order in the interests of both parties and justice.
 - e. The Appellant's application is made in good faith.
3. The application is further supported by the affidavit of REBBECA CHELUGET, the Human Resource Manager of the Appellant/Applicant in which she reiterates the grounds on the face of the application.
 4. The application is opposed by the Respondent who filed a replying affidavit sworn on 11th June 2025 in which she deposes that the Application has been filed way after the period provided for filing appeal without explaining the delay of two months after judgement. That equity aids the vigilant, that Article 159 of *the Constitution* as invoked by the Applicant should not be used to hoodwink the court into allowing the orders sought.
 5. The Respondent further deposes that the Memorandum of Appeal does not exhibit a chance of the appeal succeeding, that the Applicant has not offered security for the due performance of the decree, that the Applicant has not demonstrated the loss that it would suffer should the application not be allowed, that the Applicant has not demonstrated that the Respondent would not be able to refund the decretal sum should she be paid. She deposes that she is capable of refunding the decretal amount if paid should the appeal be successful, that the instant application is intended to deny her the fruits of her lawfully obtained judgment.
 6. The Respondent deposes that should the court be inclined to award the application then half the decretal sum should be paid to the Respondent and the balance deposited into a joint interest earning account.
 7. The application was disposed of by way of written submissions. The Applicant's submissions are dated 19th June, 2025. The Respondent's submissions are dated 31st July, 2025.
 8. I have considered the application together with the grounds and affidavit in support thereof, the replying affidavit and the submissions of the parties in respect of the application. The single issue arising for determination is whether the Applicant qualifies for the prayers sought in the application.
 9. Stay of Execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules 2010 as follows:
 - “(1). No appeal or second appeal shall operate as a stay of execution or proceeding under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2). No order for stay of execution shall be made under subrule (1) unless –



- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
10. In summary, under that rule the Applicant must meet the following conditions: -
 - a. Demonstrate that substantial loss may result to the applicant unless the order for stay is granted;
 - b. The application has been made without unreasonable delay
 - c. Security as to the due performance of the court orders is given by the applicant.
11. As a preliminary issue this court has to examine whether there is an appeal on the record. The Applicant herein has filed a Memorandum of Appeal dated 10th April, 2025 hence the application is competent on this ground.
12. The second issue that this court is called upon to address is whether the instant application has been brought timeously. The judgment having been delivered on 18th March, 2025 and the application dated 27th May 2025, and noting that no execution process has commenced, I find that the application was filed without undue delay.
13. The third issue is whether the court is satisfied on the basis of the material on the record that substantial loss would result from the execution of the judgment if the orders sought do not issue. In respect of this ground the Applicant has averred that the Respondent is a person of straw and cannot be able to refund the decretal sum should the monies be paid to her. The Respondent has not demonstrated that she will be able to pay back in the event the Applicant’s Appeal is successful.
14. In the circumstances, I am persuaded that the Appellant/Applicant has indeed shown that it will suffer substantial loss if the order for stay of execution is not granted.
15. As to security, the applicant has stated that it is willing to abide by such terms as the court may order in the interest of both parties and justice.
16. In view of Order 42 Rule 6 of the Civil Procedure Rules, the Applicant’s application for a stay of execution pending appeal is granted on the condition that:
 - a. 50% of the judgment sum of Kshs. 228,425 be deposited in a joint interest-earning account in the names of the Advocates for the parties within 30 days of today.
 - b. The costs of this application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF NOVEMBER, 2025

MAUREEN ONYANGO

JUDGE

