

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI**

**ELRC APPEAL NO. E260 OF 2025**

**LAVINGTON SECURITY LIMITED.....**  
**.....APPELLANT**

**VERSUS**

**OSCAR MUKWALAFU NDOLI ..... RESPONDENT**

**(APPEAL Arising from the Ruling delivered in the Chief Magistrates Court at Ruiru (Honourable  
Christine Asuna Okello) dated 25th July 2025, MC. ELRC No. E062 of 2024)**

**CORAM**

**Before Lady Justice J.W. Keli**

**C/A Otieno**

**RULING**

1. The applicant further to filing a Memorandum of Appeal against the Ruling delivered in the Chief Magistrates Court at Ruiru by Honourable Christine Asuna Okello on the 25th July 2025, MC. ELRC No. E062 of 2024 filed application dated 5<sup>th</sup> May 2025 seeking the following prayers;

- a) THAT this Honourable Court be pleased to grant and/or issue interim orders of stay of execution of the Judgement delivered on 31/1/2025 by Honourable Christine Asuna Okello and/ or consequential decree made on 1st August 2025, pending the inter-partes hearing and determination of this substantive application.
- b) THAT this Honourable Court be pleased to grant and/or issue orders of stay of execution of the Judgement delivered on 31/1/2025 by Honourable Christine Asuna Okello and/ or consequential decree made on 1st August 2025 pending the hearing and determination of the Appeal.
- c) That the cost of this application be provided for.

-

**Grounds of the application**

2. THAT the Applicant herein filed an Application seeking to set aside the ex parte Judgement by Hon. Christine Asuna Okello on 31/1/2025 in Ruiru MC. ELRC E062 of 2025 which the Learned Trial Magistrate dismissed by her Ruling delivered on 25th July 2025.
3. THAT the Respondent has extracted a Decree dated 1/8/2025 and issued warrants of Execution to Moran Auctioneers.
4. THAT the Moran Auctioneers have preceded and proclaimed various property at the applicant's offices.

5. THAT in the absence of orders of stay, the Respondent is likely to execute in terms of the Orders of the Trial court to the detriment of the intended Appeal which would thus be rendered nugatory.
6. THAT the Applicant learnt of the Proceedings herein on 7th March 2025 when the Moran Auctioneers, on the instructions of the Claimant/Respondent, visited its premises and proclaimed several goods/assets.
7. THAT the Applicant herein has filed a Memorandum of Appeal challenging the Ruling of the Hon. Learned Magistrate.
8. THAT in the absence of orders of stay, the Respondent is likely to execute in terms of the Orders of the Trial court to the detriment of the intended Appeal which would thus be rendered nugatory.
9. THAT the intended appeal raises cogent points of facts and law, the determination of which substantially affects the rights of the parties herein.
10. THAT the intended appeal raises paramount queries as to the right to fair hearing and right to be heard and the parameters within which a court of law is bound by the same.
11. THAT in the impugned ruling and/or Oder, the Learned Magistrate has condemned the Applicant as ignorant and to pay decretal sum without according it an Opportunity to be heard.

12. THAT the intended Appeal has been made without excusable delay and the Respondents will suffer no prejudice if the orders sought are granted.
13. THAT it is in the interest of justice that this Honourable court be pleased to allow this application in order to allow the Applicant to proceed to challenge the Lower court proceedings and preserve the substratum of the suit.
14. THAT the Orders sought are important to allow the superior court for the Learned Judges to determine the cogent and focal items of law raised in the Appeal.
15. THAT in the absence of orders of stay, the Respondent is likely to execute in terms of the Orders of the Trial court to the detriment of the Applicant.
16. THAT the Appellant raises paramount queries as to the right to fair hearing and right to be heard and the parameters within which a court of law is bound by the same.
17. The application was supported by the affidavit sworn on 5<sup>th</sup> August 2025 by Samuel Banda, the Director Human Resources Manager of the applicant and annexed the impugned ruling of Hon Asuna dated 25<sup>th</sup> July 2025 (SO-1), copies of warrants of execution and proclamation notice (SO-2 AND SO-3 respectively), a copy of memorandum of appeal (SO-4), and a copy of letter requesting for typed proceedings(SO-5).
18. The application was opposed by the respondent through his replying affidavit sworn on the 13<sup>th</sup> August 2025, where he annexed copies of warrants of execution as OMN-1 and,

among others, asked that the decretal sum be deposited in a joint interest-earning account if the court allows the application.

### **Decision**

19. The application was canvassed by way of written submissions. Both parties filed.

### **Whether the application for stay of execution was merited.**

20. Rule 73 of the Employment and Labour Relations Court Rules of 2024 provides as follows- *‘(2) Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.’* The relevant rule under the Civil Procedure Rules is Order 42 Rule 6 to wit- ***‘6. Stay in case of appeal [Order 42, rule 6]***  
*(1) No appeal or second appeal shall operate as a stay of execution or proceedings 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.’’*

21. The court established there was no unreasonable delay in filing the application. The impugned ruling was delivered on the 25<sup>th</sup> July 2025 and the instant application filed 11<sup>th</sup> August 2025. Since this is a money decree, the court believed that the respondent's failure to file an affidavit of means demonstrating their ability to refund the money if paid in the event the appellant was successful on appeal demonstrated a substantial risk of the appellant losing any paid money. This risk could make the appeal nugatory.

22. In Butt -vs Rent Restriction Tribunal (1982) KLR 417 the Court of Appeal(Madan J.A) gave guidance on how a Court should exercise discretion in an application for a stay of execution, that: -

*“If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings.*

*It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the*

*case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in Wilson v Church (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458: "I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory."*

23. On the issue of security for performance of the Decree- the requirement is - *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. (Rule 42(6)(b)above )* The applicant stated it would abide by any condition of the court on the security. The condition of security is such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant. (section 42(6) of the Civil Procedure Rules ). The court orders as security that ½ of the decretal sum be deposited in joint interest earning account held by advocates for both parties within 30 days.

**Conclusion**

24. In conclusion, the court allows the application as follows-

- a. THAT this Honourable Court is pleased to grant and/or issue orders of stay of execution of the Judgement delivered on 31/1/2025 by Honourable Christine Asuna Okello and/ or consequential decree made on 1st August 2025 pending the hearing and determination of the Appeal. The court orders as security that ½ of the decretal sum be deposited in joint interest earning account held by advocates for both parties

within 30 days. That the cost of this application is awarded to the respondent as the decretal sum remains unsettled.

- b. The record of appeal be filed in 30 days. Mention on 19<sup>th</sup> January 2026 for further direction on the appeal.

25. It is so Ordered.

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

**J.W. KELI,  
JUDGE.**

**IN THE PRESENCE OF:**

Court Assistant: Otieno

Appellant – Ms Kwamboka

Respondent – Ms. Chano

ORIGINAL