

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1154 OF 2018

(Before D. K. N. Marete)

IMAANA SILAS MWITHALI.....APPELLANT

-VERSUS-

ONE RESIDENCE LIMITEDRESPONDENT

RULING

This is an application dated 3rd September, 2025 seeking stay of execution of the judgment and decree of this court pending hearing and determination of this application *inter partes*. It also seeks leave to file an appeal out of time on terms and conditions that this court deems fit.

The application is grounded on the basis that this court delivered judgment and awarded the claimant one (1) month salary in lieu of notice as well as six (6) months salary as compensation for unlawful termination of employment all totaling Kshs.1,260,000.00. This was despite the fact that at the time of termination of employment, the claimant was still on probation and had been barely employed three (3) months in employment.

The matter came to court variously until the 9th October, 2025 when the parties submitted to a dispensation with the preliminary objection dated 22nd September, 2025 and choose to neatly proceed with this application. They also opted out of a determination by way of written submissions.

The Respondent/Applicant is desirous of appealing again this judgment of court but appreciates that time of filing of notice of appeal as lapsed therefore necessitating this application. This happened because the Applicant's advocate on record initially made a review of the judgment instead of an appeal and that the Respondent should not be punished due to the errors of his counsel on record. There is still need to challenge this judgment of court. Again, during the time of the impugned judgment the Respondent/Applicant was out of the Country thereby occasioning an extended breakdown of communication between themselves and their advocates.

The Applicant's further avers that the appeal has high chances of success and if executed the same would render nugatory and also cause substantial and irreparable harm and loss. Further, the appeal has been brought out without unreasonable delay.

The Respondent opposes the application and submits that the process of execution or even execution *per se* does not amount to substantial loss as provided for and Order 42 Rule 6 of the Civil Procedure Rules. On the face of it, execution is a lawful process. This comes out thus;

- (a) Mere financial burden occasioned by a judgment does not constitute substantial loss for purposes of grant of an order of stay of execution.*
- (b) No factual particulars of the kind of loss that might be suffered have been specified or detailed to form a basis for stay of execution order.*
- (c) No substantive details that execution will create a state of affairs that will irreparably affect or negate the very essential case of the Applicant as the successful party in the appeal to form a basis for substantial loss.*

Again, judgment in this matter was delivered on 21st February, 2024 with the application for review being lodged on 27th May, 2024. This was supported by the affidavit of Salome Ibeere who was comes in support of this application. The applicant has not adduced any evidence that they were unaware of the nature of the application filed and neither do we have evidence of their instructions to appeal against this judgment of court. The claim of communication breakdown is also not supported by any evidence and all this comes out as a scapegoat disguised as misdeeds of their former advocates.

The Applicant by this application is in contravention of the overriding objectives of this court as provided under sections 1A and 1B of Civil Procedure Act and also the Employment and Labour Relation Court Act which provide for expeditious delivery of cases and avoidance of a multiplicity of actions. The Applicant having preferred a review cannot now be seen to also want to appeal against the judgment of court. This amounts to an abuse of the process of court.

In their Replying Affidavit sworn on 22nd September, 2025 the Claimant/Respondent/Decree holder faults the applicant for bringing out this application nineteen (19) months down the line when execution has been had with the sale of the Respondent motor vehicle through a public auction on 14th September, 2025. This is undue delay and makes the entire process and sensibility of this application clumsy.

The Applicant has not established the fundamental requirement of a grant of orders of stay of execution or filing of an appeal out of time. Order 42 Rule 6 is explicit on this. There has not been evidence of substantial loss or negation of the appeal by the absence of a grant of the orders

sought. Further, the appellant/Applicant has not demonstrated that they have any chances of success in the appeal as is required of the law.

I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

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

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Odari instructed by Kimakia Magara & Partners Advocates for the Respondent/Applicant.
2. Miss Mathu instructed by Gitau Mathu & Associate LLP for the Claimant/Respondent.