

**REPUBLIC OF KENYA**

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

**ELRC NO. E228 OF 2025**

**SUPERIOR HOTELS KENYA LIMITED**

**T/A  
HOTEL.....APPLICANT/APPELLANT**

**WESTWOOD**

**VERSUS**

**LYNDA WASIDA.....1<sup>ST</sup> RESPONDENT**

**COMPLIANCE AUCTIONEERS.....2<sup>ND</sup> RESPONDENT**

**Coram**

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

**C/A Otieno**

**RULING**

1. The applicant aggrieved by the judgment of Hon. Hosea Nganga delivered on the 10<sup>th</sup> July 2025 in Milimani MCELRC /E2048/2022 between the parties filed an application by way of Notice of Motion dated 13<sup>th</sup> August 2025 brought under the provisions of Sections 1, 1A, 3, 3A and 63E of the Civil Procedure Act, Order 42 rule 6, Order 51 rule 1 of the Civil Procedure Rules and all the enabling provisions of the law, seeking for ORDERS:-

a) spent

- b) spent
- c) THAT upon hearing this application ex-parte, this Honourable Court be pleased to grant of stay of execution against the Judgement delivered on the July 10, 2025 and all consequential orders thereof pending the hearing inter-parties of the appeal preferred therefrom
- d) THAT costs of this application be provided for.

**2. Grounds of the application**

- a) THAT following the delivery of judgment in issue, and being dissatisfied with the same, the Applicant on the same day sought certified copies of proceedings, judgment and decree to lodge the appeal and on July 17, 2025 lodged the said appeal against the judgment.
- b) THAT following the delivery of judgment in issue, a stay of execution was granted for 30 days which such stay lapsed on August 10, 2025.
- c) THAT despite an appeal in this matter being lodged the Respondent has proceeded to execute the judgment delivered on July 10, 2025 and has already issued a Proclamation Notice, Warrants of Attachment of movable property in execution of a decree for money and Warrant of Sale of Property in execution of decree for money all dated August 11, 2024,

- d) THAT the Applicant stands to suffer great substantial loss if the execution is not stayed as the items sought to be attached are pertinent to the running of their hotel business. If execution proceeds the Applicant and their employees will be unable to continue operating their business which will lead to loss of employment for several employees and also income
- e) THAT no prejudice will be suffered by the respondent herein, should the status quo be maintained, whereas the applicant will be visited by unimaginable loss and damage, were the orders sought herein, denied.
- f) THAT the intended appeal will be rendered nugatory if the stay sought is not granted
- g) THAT the Applicant/Appellant has an arguable triable appeal that ought to be ventilated before the Honourable Court
- h) THAT the instant application is not only brought in good faith and untainted with ordinate delay, BUT is further grounded upon the rules of natural justice, the overriding objective, fair play, the very sacred tenets of equity and statute law, and this Honourable court ought to be pleased to grant the same.

3. The application was supported by the annexed affidavit of Terry Wambuku Kariyu, sworn on the 13th August 2024(the court believed the date of 2024 was an error as the application was dated 13th August 2025). The deponent annexed copies of the proclamation notice and

warrants of attachment (**MMK1**), a copy of the impugned judgment (MMK2), a copy of the request for the proceedings, decision, and payment (MMK3), and a copy of the memorandum of appeal and the payment (MMK4).

4. The application was opposed by the respondent vide her replying affidavit, sworn on the 12th September 2025, who raised the following points in opposition to the application-
  - a. THAT the Applicant has not advanced any valid reasons justifying a stay of the Honourable Court's judgment which was entered regularly and after taking evidence, reviewing the filed documents and correctly applying the provisions in the Employment Act.
  - b. THAT apart from allusions of substantial loss the deponent has not demonstrated that substantial loss would be occasioned if stay is not granted.
  - c. THAT the impugned judgment and decree is a money decree kshs. 696,970.79 which is ascertainable or capable of being ascertained and refunded in the unlikely event the Applicant were to succeed on any appeal.
  - d. THAT execution is a lawful process, this application has not been brought in good faith as it is a tactic by the Appellant to further stretch litigation as nothing has been presented to demonstrate that the Applicant will be prejudiced if the orders sought are not granted.
  - e. THAT the applicants' application and the purported appeal lack merit, have no chance of success. Both are misleading, brought in bad faith and ought to be dismissed with costs.
  - f. THAT this court should not only entertain the Applicant but also safeguard my interests as I have waited for this judgment since 12th January 2021 when I was terminated from the Respondent's employ and entitled to payment of my terminal dues.

- g. THAT I am able and in a position to refund the decretal sums in the unlikely event the court finds that my claim lacked merit before the lower court. (Attached as LW1 AND LW2 is a copy of my employment contract and July 2025 pay slip to confirm this)
- h. THAT I am a successful litigant entitled to enjoy the fruits of a successful litigation but is being restricted while in pursuit for the same.

### **Decision**

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

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

6. The court perused the submissions by both parties. 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.’’*

7. The court determined there was no unreasonable delay in filing the application. The impugned judgment was delivered on the 10th July 2025, and the instant application was filed on 14th August 2025. The respondent filed a contract of service and a payslip to demonstrate financial means. Her net salary was Kshs. 42,437.44. The money decree was for Kshs. 696,970.79. The court was not satisfied that the salary earned by the respondent was sufficient to demonstrate the respondent’s ability to refund the decretal money if paid in the event the appellant was successful on appeal. The court was satisfied that the applicant had demonstrated a substantial risk of the appellant losing any paid money. This risk could make the appeal nugatory. 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.”*

8. 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. (section 42(6) of the Civil Procedure Rules). The court orders as security that ½ of the decretal sum be deposited in a joint interest-earning account held by advocates for both parties within 30 days.
9. 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 10<sup>th</sup> July 2025 by Honourable Hosea Mwangi Nganga and consequential proceedings pending the hearing and determination of the Appeal. The court orders as security that ½ of the decretal sum be deposited in a 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.

C. 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. Wangui

Respondent – Kimandu & Ndegwa Company Advocates