



**Kenya Concrete, Structural, Ceramic Tiles, Wood Plys & Interior Design Workers Union v Mara Tea Limited (Cause E902 of 2022) [2025] KEELRC 3467 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3467 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E902 OF 2022  
CN BAARI, J  
DECEMBER 4, 2025**

**BETWEEN**  
**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOOD PLYS &  
INTERIOR DESIGN WORKERS UNION ..... CLAIMANT**  
**AND**  
**MARA TEA LIMITED ..... RESPONDENT**

**RULING**

1. Before court is Respondent’s Motion application dated 28<sup>th</sup> May, 2025, brought pursuant to Order 51 Rule 1, Order 42 Rule 6, Section 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Rule 73(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024, Articles 22(1) and 159(2) (d) of *the Constitution* of Kenya. The Respondent seeks orders That: -
  - i. Spent
  - ii. Spent
  - iii. That the Honourable court be pleased to stay execution of the Ruling made by the Employment and Labour Relations Court at Nairobi in ELRC Cause No. E092 OF 2022; Kenya Concrete, Structural, Ceramic Tiles, Wood Plys And Interior Design Workers Union - vs- Mara TEA on the 30th day of April, 2025 for six (6) months pending the lodgment, hearing and determination of the Applicant’s intended Appeal at the Court of Appeal.
  - iv. Such further or other order or orders be made as the Honourable Court may deem expedient for the end of justice.
  - v. The costs of and incidental to this application be provided for.



2. The application is supported by grounds on the face of the motion, and the affidavit of Arthur Mwangi. The crux of the motion is a judgment delivered on 14<sup>th</sup> June 2024 and a decree issued on 9<sup>th</sup> September 2024, in which the Court entered judgment against the Respondent.
3. The Applicant states that subsequent to the decree, it filed an application dated 14<sup>th</sup> November 2024 seeking several orders, including the setting aside of the default judgment and a stay of execution pending the determination of that application. It avers further that through a ruling delivered on 30<sup>th</sup> April 2025, the Court dismissed the Applicant's application with costs to the Respondent.
4. The Applicant avers that, being dissatisfied with that ruling, it has chosen to exercise its right of appeal and now seeks to lodge an intended appeal aimed at setting aside the entire decision, which it believes is arguable and has good prospects of success.
5. The Applicant avers that it complied with the Court order of 18<sup>th</sup> December 2024 by depositing the entire decretal sum of Kshs. 1,355,539.88 in Court on 20<sup>th</sup> December 2024, but following the dismissal of its application on 30<sup>th</sup> April 2025, the Respondent may now move the Court to have this deposited sum released.
6. It avers that the court granted it a 30 day stay of execution, which lapsed on 30<sup>th</sup> May 2025, exposing it to execution from 31<sup>st</sup> May 2025. It is its further position that it subsequently filed an application in the Court of Appeal under Rule 5(2)(b) seeking a stay of execution of the ELRC decision delivered on 30<sup>th</sup> April 2025, pending the intended appeal.
7. The Applicant states that to preserve the status quo, it now seeks an extension of stay of execution for 60 days to allow the Court of Appeal sufficient time to hear and determine the stay application, as without fresh stay orders, the appeal will be rendered nugatory.
8. The Applicant maintains that the intended appeal raises triable and arguable issues, and that preserving the deposited decretal amount is necessary to maintain the substratum of the appeal. It further contends that the learned Judge erred in dismissing its application and in denying it the right to be heard, contrary to Articles 50(1) and 159(2) of *the Constitution*.
9. It avers that its grievances include the Judge's failure to appreciate the Applicant's reasons for seeking to reopen the case, as well as the alleged violation of the principles of fair hearing and justice.
10. The Claimant/Respondent opposed the application vide a replying affidavit sworn by one Dishon Angoya on 30<sup>th</sup> May, 2025. It avers that the court order dated 30<sup>th</sup> April 2025 is a negative order that cannot be stayed.
11. The Claimant further states that while the Applicant has a right to appeal, this right must be balanced against its right to enjoy the fruits of a valid judgment. It states that a successful litigant is ordinarily entitled to benefit from the judgment, especially where the opposing party has failed to establish grounds for setting it aside.
12. The Claimant avers that if the Applicant considered its Court of Appeal application urgent, it should have moved that court under a certificate of urgency rather than returning to the trial court, and that it has also failed to produce evidence showing that any substantive application has indeed been filed before the Court of Appeal.
13. It states further that granting the stay sought would wrongly assume that the Court of Appeal will allow the Applicant's stay application, and if the appellate court later declines the stay, conflicting orders would arise.



14. The Claimant maintains that much of the Applicant's current application appears to argue the merits of the intended appeal while presenting itself as a request for a stay of execution.
15. The Claimant states that the Applicant seems to be filing repeated applications of a similar nature, merely adjusting the grounds, in an apparent attempt to delay the final conclusion of the matter, and prays that the court dismisses the Applicant's application with costs.
16. The Applicant filed a further affidavit dated 8<sup>th</sup> September, 2025, wherein, it argues that it has since lodged an appeal in the Court of Appeal, COACA/E701/2025: Mara Tea Limited v. Kenya Concrete, Structural, Ceramic Tiles, Wood Plys and Interior Design Workers Union & Sanjomu Auctioneers, seeking to set aside the ruling of 30<sup>th</sup> April 2025.
17. The Applicant contends that it should be allowed to pursue its appeal without being compelled prematurely to satisfy the decretal obligations arising from the impugned ruling, as its right of appeal is fundamental. It states further that it is apprehensive that, without a stay of execution, the appeal will be rendered nugatory.
18. The Applicant avers that its further affidavit affirms that the appeal has indeed been filed and is pending determination, and now seeks the grant of stay orders as requested in the application of 28<sup>th</sup> May 2025, and prays that the Court finds the application meritorious and allows it.
19. Parties canvassed the motion by way of written submissions, which have been duly considered.

#### **Determination**

20. I have considered the application, the grounds and affidavit in support, the further affidavit, the Claimants' replying affidavit, and the rival submissions. The sole issue for determination is whether the Applicant is entitled to a further 6-month stay order.
21. The Applicant's position is that it was granted a 30 day stay of execution, which lapsed on 30<sup>th</sup> May 2025, exposing it to execution from 31<sup>st</sup> May 2025. It asserts that it subsequently applied to the Court of Appeal under Rule 5(2)(b) seeking a stay of execution of the ELRC decision delivered on 30<sup>th</sup> April 2025, pending the intended appeal. The Applicant states that, to preserve the status quo, it now seeks an extension of the stay of execution for 60 days to allow the Court of Appeal sufficient time to hear and determine the stay application, as, without fresh stay orders, the appeal will be rendered nugatory.
22. The court notes that indeed, the Applicant filed an application dated 26<sup>th</sup> June, 2025, before the Court of Appeal wherein, it seeks exactly the same orders as those sought under the instant motion. It is further apparent that what the Applicant seeks under this motion is 6 month extension of stay, which it reduced to 60 days, as it awaits the stay order that it applied for from the Court of Appeal.
23. It is also evident that the Applicant's application is dated 28<sup>th</sup> May, 2025, and by simple arithmetic, the period of extension of stay sought is already past, and hence the application as drawn is overtaken by events.
24. The Applicant has also admitted that it has since lodged a similar motion before the court of appeal for the same reliefs as those sought herein, which in my view, amounts to a gross abuse of the court process.
25. I therefore find the Applicant/Respondent's motion devoid of merit and an abuse of the process of the court.
26. It is hereby dismissed with costs to the Claimant.
27. Orders accordingly.



**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
4<sup>TH</sup> DAY OF DECEMBER, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Mwenesi present for the Claimant/Respondent

Ms. Oduo present for the Respondent/Applicant

Ms. Esther S – C/A

