



**Kenya Aerotech Limited v Muindi (Employment and Labour Relations Appeal E295 of 2025) [2025] KEELRC 3565 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3565 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E295 OF 2025**

**JW KELI, J  
DECEMBER 10, 2025**

**BETWEEN**

**KENYA AEROTECH LIMITED ..... APPELLANT**

**AND**

**JACKSON MAWEU MUINDI ..... RESPONDENT**

*(Appeal from an Order of the Magistrates' Court at Nairobi delivered orally by Hon. Lucy Ambasi (CM) on the 18th August 2025 in Milimani MCELRC/E1431/2022; Jackson Maweu Muindi v. Kenya Aerotech Limited)*

**RULING**

1. The applicant filed application by way of Notice of Motion dated 29<sup>th</sup> August 2025 brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B, 3A & 79G of the *Civil Procedure Act*, Article 50 & Article 165(6) of *the Constitution* of Kenya and all enabling provisions of law seeking for the following Orders-
  - a. spent
  - b. spent
  - c. That there be a stay of proceedings in Milimani MCELRC/E1431/2022-Jackson Maweu Muindi v. Kenya Aerotech Limited; pending the hearing and determination of this Appeal.
  - d. That costs of this application be provided for.
2. Grounds of the application
  - a. That the Appellant filed its Defence dated 10th May 2023 which is duly on record and was expressly responded to by the Respondent through a Reply to Defen dated 29th July 2024.



- b. That the trial Court erroneously and without basis treated the Appellant's Defence as not on record following a misinterpretation of a flawed ruling delivered on 6th September 2024.
- c. That, on 18th August 2025, when the matter came up for hearing, the Court orally ruled that the Defence was not on record, thereby locking out the Appellant from participating in the proceedings.
- d. That the Appellant stands to suffer grave prejudice if the matter proceeds undefended, as its constitutional right to a fair hearing will be violated.
- e. That the intended Appeal is arguable, raises serious questions of law and fact, and will be rendered nugatory if stay is not granted.
- f. That this honorable Court has supervisory jurisdiction over subordinate courts.
- g. That this Application has been brought timeously and in good faith

The application was supported by the annexed affidavit of Edward Njenga Muchai sworn on the 29<sup>th</sup> August 2025 and annexing as ENM1 copies of defence pleadings before the trial court, ENM2 copy of application for security of costs, ENM3 reply to the defence, ENM4 copy of ruling dated 6<sup>th</sup> September 2024, ENM5 copy of CTS activities under the suit, ENM6 a copy of request for proceedings and payment receipt.

3. The application is opposed by the Respondent's vide a Replying Affidavit sworn on 24th September 2025. In a nutshell, that the application lacks merit and should be dismissed with costs for the following reasons;
  - a. No ruling or order was rendered by the trial court on 18th August 2025 worthy of an appeal. The trial court only issued directions on how the hearing of the suit should proceed after declining the Appellant's request for an adjournment.
  - b. The only directions or orders issued by the trial court on 18th August 2025 was to decline the Appellant's request for adjournment of the hearing of the suit and to direct that the suit proceeds for hearing as earlier scheduled.
  - c. It is an appeal against the Ruling of the trial court delivered on 7th September 2024 striking out the Appellants Statement of Defense disguised as an appeal against nonexistent orders of the trial court rendered on 18th August 2024.
  - d. The appeal is a non-starter and contrary to the provisions of Rule 12 (2) of the Employment and Labor Relations Court (Procedure) Rules which provides that appeals from the decisions of Magistrate Courts should be filed within thirty (30) days from the date of the decision.
  - e. The appeal herein is seeking to overturn a decision of the Chief Magistrate Court at Milimani Commercial Courts delivered on 7th September 2024 one (1) year after the impugned decision was delivered.
  - f. That the period within which an appeal was to be filed against the decision of 7th September 2024 has long lapsed hence the appeal herein has been filed out of time without leave of court and is bad in law liable to be struck out in limine. The applicant is therefore not entitled to the stay order sought since no appeal lies before the honorable court.



- g. The matter has already proceeded for hearing before the trial court in the presence of the Appellant's counsel who participated in the hearing and took directions on filing of written submissions after the conclusion of the hearing.
- h. The Respondent herein has already filed and served his written submissions and what is pending before the trial court is issuance of a judgment date. The Respondent will therefore be highly prejudiced if the proceedings before the trial court which in any case are at their penultimate stage are stayed. the Applicant has not demonstrated the substantial loss that it will suffer if the proceedings before the trial court are not stayed.
- i. In the circumstances it is the Respondent who is bound to suffer substantial loss by the delay that will be occasioned in the determination of his suit if stay of proceedings orders are granted given that the hearing of the suit has been concluded and what is pending is the judgment of the trial court.

### Decision

- 4. The application was canvassed by way of written submissions. Both parties filed and the court considered the submissions.
- 5. 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."
- 6. The court established there was no unreasonable delay in filing the application. The memorandum of filed with the application raised issue for breach of fair hearing which is a constitutional right of the applicant and thus arguable grounds of appeal having been raised.
- 7. 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. The court finds it is in the interest of justice to stay the proceedings pending hearing and determination of the intended appeal. The application dated 29<sup>th</sup> August 2025 is allowed.
9. Cost of the application to the respondent in the cause.
10. The appeal to be fast-tracked. The appellant to file record of appeal in 45 days and serve. Mention on the 21<sup>st</sup> January 2026 for further directions.
11. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10<sup>TH</sup> DAY OF DECEMBER, 2025.**

**J.W. KELI,**

**JUDGE.**

In the Presence of:

Court Assistant: Otieno

Appellant – absent

Respondent- absent

