



**Kenya Union of Commercial Food and Allied Workers v Eldoret Packers Limited
(Cause E011 of 2021) [2025] KEELRC 3493 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3493 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E011 OF 2021
MA ONYANGO, J
DECEMBER 4, 2025**

BETWEEN
**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS APPLICANT**
AND
ELDORET PACKERS LIMITED RESPONDENT

RULING

1. By a Notice of Motion application dated 21st May, 2025 brought under Article 22, 48, 50(1) and 159 of *the Constitution* of Kenya, 2010, sections 13 of the *Employment and Labour Relations Court Act*, Rule 73(2) of the Employment and Labour Relations Court f (Procedure) Rules, 2024, Order 42 Rule 6 of the Civil Procedure Rules, 2010, and all enabling provisions of the law, the Applicant prays for the following orders: -
 - a. That this application be certified as urgent and the same be heard ex-parte in the first instance
 - b. That there be temporary orders of stay of execution and/or further execution and/or enforcement of the decree herein pending the hearing and determination of this application inter-parties.
 - c. That there be stay of execution and/or further execution and/or enforcement of the decree herein pending the hearing and determination of the appeal to the Court of Appeal against the judgment/decree made on 9/5/2025.
 - d. That costs hereof be in the appeal.
2. The grounds in support of the application are that:
 - i. The Claimant/Respondent on 9/5/2025 obtained judgment in its favour.



- ii. That the Respondent/Applicant being dissatisfied with the Courts decision made on 9/5/2025 lodged an appeal to the Court of Appeal.
 - iii. The Respondent/Applicant has an arguable appeal with overwhelming chances of success.
 - iv. That the Respondent/Applicant desires to be heard on the appeal in the Court of Appeal and therefore the need to grant the orders of stay of execution pending appeal.
 - v. That the Respondent/Applicant intended appeal nugatory in the event that execution of the decree of this court proceeds and the appeal to the Court of Appeal succeeds given that the Respondent/Applicant will be forced to enter into a binding agreement which bears huge financial ramifications on the Respondent/Applicant yet the Claimant/Respondent and its members may not be in a position to either refund the monies paid to them or the expenses that the Respondent/Applicant may incur in complying with the decree of this court if the appeal succeeds.
 - vi. The claim by the Claimant/Respondent was denied from the word go hence the need for a second opinion on the matter by the Court of Appeal which right ought to be allowed to be exercised freely.
 - vii. It is only fair and just that this application be allowed in order to prevent the ends of justice from being defeated.
 - viii. No prejudice will be suffered if the orders sought are allowed.
 - ix. That this court has the power to grant the prayers sought herein in the best interest of justice and fairness.
 - x. That the Respondent/Applicant is ready and willing to comply with the provisions of Order 42 Rule 6 of the Civil Procedure Rules, 2010 for grant of stay of execution pending appeal which should not be punitive.
 - xi. That the Respondent/Applicant has a right to access justice as guaranteed under Articles 22 and 48 of *the Constitution* of Kenya , 2010.
 - xii. That any order and/or decision of the made in line with Order 42 Rule 6 of the Civil Procedure Rules, 2010 that is punitive and unreasonable will result in denial to access to justice which is unconstitutional.
 - xiii. The application has been brought timely and in good faith.
 - xiv. That no party will be prejudiced if the orders sought are granted.
 - xv. This Court has powers to grant the orders sought herein in the best interest of justice and fairness.
3. The Application is further supported by the affidavit of Raj Kachela, a director of the Applicant in which he reiterates the grounds in support of the application.
 4. The Respondent opposed the application through a replying affidavit of Mike O. Oranga, the National Organizing Secretary of the Claimant sworn on 9th June, 2025. Mr. Oranga deposes that the application is incompetent, an abuse of court process, lacks merit and should be dismissed with costs. That the Applicant has not provided sufficient cause to warrant stay of execution.



5. Mr. Oranga further deposes that the Applicant refused to present its counter proposals for the CBA negotiations and further refused to cooperate with CPMU for preparation of an economic report to assist the court in the adjudication of the dispute. That the Applicant is hell bent on ensuring that its employees do not enjoy the benefits of belonging to a trade union through the CBA.
6. Mr. Oranga deposes that the Respondent will not suffer any loss, that it has frustrated every effort from conciliation level and that the intended appeal has no chances of success.
7. Raj Kachela swore a Supplementary Affidavit on 20th June, 2025 in which he states that the Applicant stands to be prejudiced if the orders sought are not granted as it would be forced to comply with the decree which has huge financial bearing yet the appeal is yet to be heard. That no evidence has been adduced of the Claimant's ability to refund monies paid out on account of collective bargaining agreement.
8. The application was disposed of by way of written submissions.
9. The Applicant in its submissions dated 23rd June, 2025 relies on Order 42 Rule 6(2) of the Civil Procedure Rules and submits that should it be forced to enter into a binding collective bargaining agreement it will suffer substantial loss in the event its appeal succeeds as the appeal would be rendered nugatory. That the members of the Claimant would not be in a position to refund the monies paid to them.
10. The Applicant relies on the decisions in Ministry of Education and 3 others v Kenya Union of Domestic Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) & another (Civil Application E418 of 2021); Kenya Chemical & Allied Workers Union v East African Portland Cement company Limited [2016] eKLR, and Ken-Knit Kenya Limited v Nyegenye (ELRC Appeal E001 of 2024).
11. On whether the application has been brought without unreasonable delay the Applicant submits that judgment was delivered on 9th May, 2025 and the application filed on 22nd May, 2025, less than a week from the date of lodging appeal on 15th May, 2025. That as such the application was filed without unreasonable delay.
12. On security for costs the Applicant submitted that it is ready and willing to comply with any conditions as provided in Order 42 Rule 6 which should not be punitive.
13. Regarding the matters raised in the replying affidavit the Applicant submitted that the same go to the merits of the appeal and can only be raised in the appeal, relying on the decision in Stanbic Bank of Kenya v Geoffrey Ndiku Mutisya & another [2007] eKLR.
14. For the Claimant it is submitted that the issues raised in the appeal are frivolous, that the Applicant has not raised compelling reasons for grant of stay pending appeal and that the Applicant is not entitled to the orders based on its conduct of refusing to give counter proposals and refusing to cooperate with CPMU who is mandated to prepare an economic report.
15. The Claimant relied on the decisions in Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 others [2024] eKLR, Samvir Trustee Limited v Guardian Bank Limited [2007] eKLR and Kenya Revenue Authority v Habimana Sued Hemed & another [2017] eKLR
16. The application was disposed of by way of written submissions.



17. I have considered the pleadings and the submissions filed by the parties. The only issue for determination is whether the Applicant has justified the grant of orders of stay of execution pending appeal.
18. Order 42 Rule 6(2) of the Civil Procedure Rules provides for stay of execution pending appeal as follows: -
- “(2) No order for stay of execution shall be made under sub rule 1) unless—
1. 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,
 2. 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.”
19. Filing an appeal is a right of every party to a suit in the realization of the right to fair hearing enshrined in Article 50 of *the Constitution* of Kenya 2010. However, Order 42 Rule 6 provides that such right is exercisable subject to the appellant providing security for the due performance of such decree.
20. In the instant case the judgment that the Applicant intends to appeal against stems from the decision of this court on a dispute involving negotiation of a collective bargaining agreement between the parties whose terms the Court determined following the failure of the Applicant to make its proposals for consideration by the court. This court does not have the benefit of knowing the grounds of appeal as no memorandum or appeal or a draft thereof has been availed to the court by the Applicant.
21. The Applicant avers that it is likely to suffer irreparable loss by being forced to sign a collective bargaining agreement with the Claimant union. It has not tabulated the amount it would be required to pay to its employees should the appeal be unsuccessful. On the other hand, the employees are in its employment and the Applicant as their employer would be in a position to recover any monies paid to them from their wages. I therefore find that the Applicant has not persuaded the court that it would suffer irreparable loss.
22. For the forgoing reasons I will grant stay of execution conditional upon the Applicant computing the value of the CBA as awarded by this court in the judgment dated 9th May, 2025 as is payable for the first year of the CBA and deposit the same in court as security. The same is to be done within 30 days failing which the stay will lapse.
23. A mention date will be taken at the time of delivery of this ruling for confirmation of compliance.
24. The costs of this application shall abide the outcome of the appeal.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 4TH DAY OF DECEMBER, 2025

MAUREEN ONYANGO

JUDGE

