



**Matende & 5 others v Board of Governors, Shree Cutch Satsang
Swaminarayan Academy (Employment and Labour Relations Cause
E418 of 2020) [2025] KEELRC 3555 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3555 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E418 OF 2020**

**JW KELL, J
DECEMBER 10, 2025**

BETWEEN

**RICHARD KUTAI MATENDE 1ST CLAIMANT
ASSUMPTER NTHEMBA KYALO 2ND CLAIMANT
BOAZ KIPTOO KASENDANY 3RD CLAIMANT
MARTIN KASYOKI MUSAU 4TH CLAIMANT
ELOSY KAGENDI MBAE 5TH CLAIMANT
RUTH KARUNGWA MWENDWA 6TH CLAIMANT**

AND

**THE BOARD OF GOVERNORS, SHREE CUTCH SATSANG SWAMINARAYAN
ACADEMY RESPONDENT**

RULING

1. The respondent aggrieved by the judgment of the court dated 20th December 2024 in the suit filed application dated 8th July 2025 brought under Order 42 Rule 6 (1) of the Civil Procedure Rules 2010 and section 1A,3A and 63 of the *Civil Procedure Act* seeking for the following Orders-
 - a. spent
 - b. spent
 - c. That this Honorable Court be pleased to issue an order of stay of execution of the Judgement of this Honorable Court delivered on 20th December, 2024 and the resultant decree for a period of sixty (60) days pending the filing of an appeal to the Court of Appeal.



2. Grounds of the application

- i. This Honorable Court delivered its Judgement on 20th December, 2024.
 - ii. That in the said Judgement, the Court awarded terminal dues, unpaid salary, compensation for unfair termination and accrued benefits to the Claimants the sum of which cumulatively amounts to Kshs. 3,408,500/=
 - iii. The Respondent/Applicant being dissatisfied with the decision of the Court had lodged a Notice of Appeal dated 9th January, 2025 against the whole of the Judgement.
 - iv. The Claimants/Respondents have served upon the Respondent/Applicant the decree with an intention to execute against the assets of the Respondent.
 - v. That there is dire need to have a formal order of stay of execution of the Judgement delivered on 20th December, 2024 pending the hearing and determination of the intended appeal at the Court of Appeal.
 - vi. The Respondent/Applicant has an arguable appeal with a high chance of success.
 - vii. It is in the interest of Justice that there be stay of execution of the Judgement and resultant decree pending the final determination of the superior court.
 - viii. The Respondent/Applicant is willing and ready to comply with any condition(s) that the Honorable Court may issue for the grant of the orders sought for.
 - ix. That no prejudice will be suffered by the Claimants/Respondents if stay orders are issued as the Respondent is willing and ready to deposit security as a condition for grant of stay of execution.
 - X. The intended appeal will be rendered nugatory if the orders sought herein are not granted.
 - xi. That it is in the interest of justice that this application be allowed as prayed.
3. The application was supported by the affidavit of Dipak Dhanji Jadva, sworn on 8th July 2025, who annexed the impugned judgment of the court, a notice of appeal dated 9th January 2025, a copy of the request for proceedings, and a copy of the Court Decree dated 2nd July 2025.
4. The applicant filed a further affidavit of Dipak Dhanji Jadva sworn on 8th July 2025 who annexed copy of letter dated 16th July 2017 addressed to Nelko Misati & company advocates pursuant to interim order of the court dated 9th July 2025 forwarding forms for opening of escrow account, several email correspondence on the issue and a further letter dated 1st August 2025 all reminders to the claimant's advocated to execute the escrow form. The applicant annexed as DDJ-3 the deposit slip for the decretal sum to the joint escrow account.
5. The application was opposed through affidavit of the 1st claimant, sworn on the 6th September 2025 as follows-
- a. That I have carefully read and understood the contents of the Respondent/Applicant Notice of Motion dated 8th July, 2025 and the affidavit in support of the same sworn by one Dipak Dhanji Jadva of even date together with the annexures therein. I have also sought for and obtained legal advice purely matters of law from the Respondent's Advocates on record and in reply thereto, I wish to depone as follows.
 - b. That the trial court delivered judgment on the 20th December, 2024 in favour of the Claimant/ Respondents.



- c. That the award by the trial court was arrived at after consideration of the evidence adduced in court during the hearing and the applicable law.
 - d. That the Respondent/applicant was first granted a 30 day stay of execution by this Honourable court on the 20th December, 2024 and the stay orders lapsed way back in January 2025. The Applicant did not bother to have the orders for stay extended.
 - e. That the application herein is an afterthought and a delaying tactic to deny the Claimants/ Respondents the fruits of their judgment, which the Respondents have been waiting for over seven [7] months.
 - f. That I am advised by my advocates on record, which advice I verily believe to be true that the court does not always interfere with judgments which are well reasoned as the case herein.
 - g. That the application herein is vehemently opposed as it is meant to deny the Claimants/ Respondents the fruits of their judgment and it is made in bad faith hence the application ought to be dismissed in the first instance.
 - h. That the Claimants/Respondents would severely be prejudiced and suffer immensely if orders sought are granted.
 - i. That the Applicant has no justifiable legal basis plausible or otherwise to warrant grant of orders of stay of execution be reinstated as sought in the instant motion application. It is almost seven (7) months since the grant of stay of execution was first granted.
 - j. That the grant of stay in at this instance will continue to prejudice adversely the Claimants/ Respondents.
6. The Court on the 9th July 2025 issued an ex parte interim order as follows-

‘This Matter coming up on 9th July 2025 for directions on the Notice of Motion dated 8th July 2025 before Honourable Justice J.W. Keli UPON perusal of the application and the annexures in the absence of the parties-

It Is Hereby Ordered:

1. That a temporary order of stay of execution is granted against the execution of the judgment and decree in the suit on condition that 1/2 of the decretal sum is deposited in joint interest earning account, to be opened in the names of the advocates on record, within 45 days of the this order in default the order to lapse automatically.
2. That the application be served for response in 14 days.
3. The applicant is to file submissions within 14 days of the response, together with any reply.

Respondent on being served by applicant is to file their submissions. Mention on 16th September 2025 to issue a ruling date.

Given under my hand and seal of the Honourable court this 9th July 2025.”

Decision

7. The application was canvassed by way of written submissions. Both parties filed.
8. 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.”

9. The court established there was no unreasonable delay in filing the application. Since this is a money decree, the court believed that the respondents’ failure to file an affidavit of means demonstrating their ability to refund the money if paid in the event the appellant was successful on appeal demonstrated a substantial risk of the appellant losing any paid money. This risk could make the appeal nugatory.
10. 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.”

11. 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 court ordered for deposit as security ½ of the decretal sum within 45 days of the Order in joint interest earning account. The order was dated 9th July 2025. The money was deposited on the 26th August 2025. The respondent contended the dispute was outside the timeframe of the order and no extension of the interim order was given. The court found evidence that the delay in opening the joint account could be attributable to the respondent. Javda for the applicant annexed correspondence in a further affidavit dated 30th September 2025 to support the fact that the respondent’s counsel delayed signing the escrow account opening forms sent on the 16th July 2025, which was 7 days post the court order. The court further, at the time of the decision on the merit of the application, finds that the deposit of security as ordered by the court was made on the 26th August 2025. No execution proceeded. Article 159(2)d obliged the court to pursue substantive justice- ‘ justice



shall be administered without undue regard to procedural technicalities; and” . A Notice of Appeal was filed within timelines. The court held that the application met the threshold of Order 42(6) of the Civil Procedure Rules. The court allows the application. This Honorable Court is pleased to issue an order of stay of execution of the Judgement of this Honorable Court delivered on 20th December, 2024, and the resultant decree pending the hearing and determination of the intended appeal.

12. Cost of the application to the respondent in the cause.

13. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Appellant – Misati

Respondent- Kimona h/b Bundotich

