



**Zamzam v Gulf African Bank Limited (Cause E006 of 2022)
[2025] KEELRC 3543 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3543 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E006 OF 2022
M MBARŪ, J
DECEMBER 11, 2025**

BETWEEN

SAID AHMED ZAMZAM CLAIMANT

AND

GULF AFRICAN BANK LIMITED RESPONDENT

RULING

1. The respondent, Gulf African Bank Limited, filed an application dated 5 May 2025 under the provisions of section 12(3) of the *Employment and Labour Relations Court Act*, rules 21 and 45 of the Employment and Labour Relations Court (Procedure) Rules and seeking Orders:

There be a stay of execution of the judgment delivered on 30 January 2025 and the resultant decree pending the hearing and determination of the intended appeal to the Court of Appeal.

2. The application is supported by the Supporting Affidavit of Lawi Sato, the senior legal officer. He avers that judgment was delivered on 30 January 2025, and that the claimant was awarded Ksh. 1 million in general damages, in addition to other reliefs and costs. The respondent is aggrieved, seeks to file an appeal, and is awaiting typed proceedings. The matter is scheduled for taxation of the bill of costs on 15 May 2025, and unless there is a stay of execution, the claim will proceed to the prejudice, loss and damage to the respondent.
3. Sato avers that the claimant has no known means to repay the judgment sum if this is remitted to him pending the hearing of their appeal. He testified that he has been unemployed since 16 September 2021 and is unlikely to have any financial means to repay the decretal sum. There will be no prejudice to the claimant if the orders sought are allowed, since the respondent is a financial institution and will be able to meet the orders of the court.
4. The respondent is willing to deposit half the decretal sum in a joint account in 30 days.



5. In reply, the claimant filed his Replying Affidavit, averring that the instant application is an abuse of court process. The respondent has only moved the court to stall the taxation of his bill of costs filed on 17 March 2025. Despite knowledge of the judgment, the respondent has done nothing to secure its right of appeal, and this has been the case for 5 months.
6. The claimant avers that the allegations that he has no financial means to pay the decreed sum, if paid to him, should not be used to deny him the fruits of his judgment. The claimant has properly moved to have his bill of costs taxed, and the respondent should not be allowed to frustrate the process with the instant application, which should be dismissed with costs.
7. Both parties filed written submissions, which were analyzed. The sole issue for determination is whether the court should stay execution of the judgment delivered on 30 January 2025 to allow the respondent to file its intended appeal to the Court of Appeal.
8. It is a common cause that judgment herein was delivered on 30 January 2025.
The claimant has since filed his Bill of Costs dated 17 March 2025.
9. The respondent, in support of the application, has filed the Supporting Affidavit of Sato, who avers that upon being issued with notice to attend the taxation of the Bill of Costs, they found it necessary to file this application. The respondent has since applied for typed proceedings of the judgment herein.
10. For a stay of execution, Rules 21 and 73 of the Employment and Labour Relations Court (Procedure) Rules allow parties to rely on the motions of the *Civil Procedure Act* and the Rules thereto.
11. The principles of Order 42, Rule 6 of the Civil Procedure Rules, require that a stay of execution be granted at the discretion of the court on sufficient cause being established by the applicant. The legal burden of proof on matters which the applicant must prove lies with the Applicant to demonstrate that:
 - a. Substantial loss may result to the applicant unless the order is made,
 - b. The application has been made without unreasonable delay, and
 - c. Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
12. In *Odhiambo v Prinias Enterprises Limited t/a Prinias Hotel* [2025] KEELRC 2893 (KLR), the court held that Order 42 Rule 6(2) of the Civil Procedure Rules is couched in mandatory terms, and for a stay of execution to issue, all the conditions must be satisfied.
13. This position is reiterated in *Chepkoech & 3 others (Suing as Former Members of the 1st Respondent, for themselves on Behalf of 143 other Former Members of the Union) v Kenya Plantation and Agriculture Workers Union (KPAWU)* [2025] KEELRC 2870 (KLR) that a delay in filing an application seeking stay of execution must be put into account. Failure to address the matter at the earliest opportunity denies the applicant a fair chance of obtaining such an order.
14. In this case, although no appeal has been filed, a notice of appeal has been submitted. Such intention has not been actualised in any manner. There is nothing in a draft memorandum attached to the Supporting Affidavit. The intention to appeal is left bare.
15. The submissions that the claimant has not been employed since 2021 cannot be used against him, as he holds a valid judgment of the court, which he is justified in executing.



16. The offer to deposit half of the decretal sum in a joint account in its own is not sufficient cause for the grant of a stay of execution. The inordinate delay from January to May 2025 remains unaddressed.
17. The court finds the respondent has not satisfied the basic conditions for the grant of a stay of execution of the judgment herein delivered on 30 January 2025.
18. Application dated 5 May 2025 is hereby dismissed. Costs to the claimant.

DELIVERED IN OPEN COURT AT MALINDI, THIS 11TH DAY OF DECEMBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

..... and

