

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS

ELRCA NO. E037 OF 2025

BIZROCK GROUP LIMITED.APPELLANT/APPLICANT

VERSUS

FELIX OTIENO ODHIAMBO.RESPONDENT

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The facts that prompted the filing of the Application dated 30 July, 2025 can be traced back to the Ruling of Hon. B. Ojoo delivered on 23rd June, 2025 in Mavoko MCELRC Cause No. E264 of 2024 which dismissed the Appellant/Applicant's Application dated 11th March, 2025. In the said Application, the Appellant/Applicant was seeking the striking out of the Respondent's suit in its entirety as commenced therein. Aggrieved by the Ruling of the court especially on the lower court disregarding that the Appellant and the Respondent had signed a valid discharge contract wherein the Respondent undertook not to launch any future claims against the Appellant on the subject matter, the Appellant filed the instant Appeal vide a Memorandum of Appeal dated 7th July, 2025, seeking the setting aside of the trial court's Ruling and having the lower court matter dismissed. The application was supported by the

affidavit of Ramji Naran Patel sworn on the 30th July 2025 and his further affidavit sworn on the 25th September 2023 in which he annexed the settlement cheque under the discharge and authority to plead. The application sought for the following Orders-

- a. Spent
 - b. Pending the hearing and determination of this Application inter-parties, an order of stay of proceedings in Mavoko MCELRC Cause No. E264 of 2024; Felix Otieno Odhiambo vs Bizrock Group Limited, be and is hereby issued.
 - c. Upon the hearing and determination of this Application inter-parties, the Order issued in (b) above be confirmed and extended to operate pending the hearing and determination of the instant appeal.
 - d. Costs of this Application be in the cause.
2. The application was opposed by the respondent who filed a replying affidavit dated 18th September 2025.
 3. The application was canvassed by way of written submissions. Both parties complied.
 4. The issue for determination is whether the application met the threshold for the grant of an order of stay of proceedings pending the intended appeal.

Applicant's submissions

5. The commencement point of the analysis of the issue herein are the sentiments of Ringera J. (as he then was) in Global Tours and Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000, where he stated as follows concerning stay of proceedings: "As I understand the

law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously" The above was also applied with approval in the case of Ezekiel Mulee Musembi vs H. Young & Company Advocates (EA) Limited (2019) eKLR where the court emphasized that stay of proceedings is crucial where it is ascertained that the appeal is an arguable one and that the application for stay of proceedings was filed within reasonable time. In allowing an application for stay of proceedings as filed therein, the court stated as follow at paragraph 18 of its Ruling: "Whereas the court in such an application may be entitled to look at the intended appeal and see whether or not the intended appeal is not frivolous so as to satisfy itself it is not being asked to suspend the proceedings so as to frustrate the hearing and delay the expeditious disposal of the matter, care must, however, be taken to ensure that the court does not purport to preside over the intended appeal so as to avoid usurping the powers of the appellate court." From the above authorities, which form the guiding law on stay of proceedings, the following requirements can be distilled out. Hence, for the court to exercise its discretion in granting an order of stay of proceedings pending appeal, it must be demonstrated that; a. The pending appeal is arguable. b. The stay of proceedings will be more advantageous as compared to failure to stay. c. The application is filed expeditiously.

We shall proceed to submit on the three requirements as follows: As regards an arguable appeal. The question as to what amounts to an arguable appeal was determined by the Court of Appeal in *Kimani & Another vs Benson*, Civil Appeal No. E006 of 2023 where it was stated thus; "An arguable appeal is not one that must succeed but one which deserves consideration by this court" Similarly, in *Damji Paragji Mandaria vs Sara Lee Household & Body Care (K) Limited*; Civil Application No. 345 of 2004; the court defined an arguable appeal in the following terms; "On whether the appeal is arguable, it is sufficient if a single bonafide arguable ground of appeal is raised." The instant appeal commenced vide a Memorandum of Appeal dated 7h July, 2025 premised on various grounds. A summary of the grounds of Appeal raises pertinent issues which require determination by this court. For instance, the following issues can be distilled from the appeal; a. Whether the discharge contract dated 2 October, 2024 clearly waived any further claims by the Respondent, thereby extinguishing the cause of action. b. c. Whether the trial court properly applied the provisions of Order 2 Rule 15 of the Civil Procedure in dismissing the Appellant's Application dated 11 March, 2025. Whether the Trial Court failed to appreciate and be bound by the law of precedence in rendering its decision. d. Whether the court erred in proceeding to set for trial a claim that had been extinguished by mutual agreement between the parties. The above issues are among those that are likely to emanate at the hearing of this appeal. A cursory look on the above issues portrays that the same raise triable questions which attract this court's determination. Similarly, it is patently clear that since the instant appeal challenges a Ruling emanating from an application that sought to strike out the trial suit in its entirety, the same goes to the root of the trial suit. Hence, the determination of this appeal before the hearing of the trial case will greatly determine whether or not the Respondent herein has a prima facie case against the Appellant/Applicant at the trial stage. 16. Based on

the foregoing analysis, it is conclusive that the appeal herein is arguable hence requires this court's determination. The proceeding of the trial case to the hearing will indeed prejudice the instant appeal. hence, it is only in the interest of justice that the trial case is stayed, pending the hearing and determination of this appeal. As regards the pros and cons of stay of proceedings. It has already been settled by the authorities as cited herein that in issuing an order of stay of proceedings pending appeal, the court should weigh both the advantages and disadvantages of issuing such an order. In so doing, the court should consider whether any of the parties will be prejudiced as a result of the order of stay, whether the stay will facilitate the achievement of the overriding objective of the court, among other issues. In the instant case, it is our submission that the granting of an order of stay of proceedings in Mavoko MCELRC Cause No. E264 of 2024 will be more advantageous than failure thereof due to the following reasons; a. The failure to issue an order of stay of proceedings will prejudice the meritorious determination of this appeal as the trial matter has already been set for hearing on 6t November, 2025. b. If the instant appeal and the trial suit proceed concurrently, the same may amount to sub-judice as the issues raised in this appeal may also be determined at the trial court, leading to conflicting decisions of the two courts. C. d. The stay of proceedings in the trial court is likely to lead to conclusive determination of the both the trial suit and the instant appeal as the appeal herein touches on the existence of a cause of action against the Appellant herein. The stay of proceedings in the trial case pending the determination of this appeal will lead to efficient use of the scarce judicial resources, as it will tend to avoid the use of the said resources in vain. e. If the trial suit proceeds, the instant appeal may be rendered nugatory by virtue of the fact that the same touches on the sustainability of the trial case. It is apparent that the advantages of granting an order of stay of proceedings in the trial suit pending the determination of this appeal outweigh the

disadvantages. Hence, the application dated 30 July, 2025 succeeds on this ground. We pray that the court finds so. c. Whether the application was filed expeditiously. It is worth to note that the instant Application was filed on 30 July, 2025, while the Ruling appealed against was delivered on 23d June, 2025. This is approximately one month. The same does not amount to inordinate delay. On the same note, the Memorandum of Appeal herein was filed on 7th July, 2025, which is barely 14 days after the delivery of the impugned trial court Ruling. Also, the delay in getting the directions on the instant application was not as a result of the Applicant's actions since the same was filed before the commencement of the August recess. The Applicant made all the available attempts to have the application issued with directions, including but not limited to informing the court's registry, however these efforts proved futile until the 27th August, 2025, when the Applicant filed a Chamber Summons Application dated 7th August, 2025 seeking the consideration of its application dated 30 July, 2025. The above is clear that the Application dated 30h July, 2025 was filed expeditiously. Additionally, the Appellant has already filed the Record of Appeal in this matter, dated 14h August, 2025. This demonstrates the Appellant's vigilance on pursuing this appeal. Consequently, the Application dated 30 July, 2025 is merited in this ground.

6. On lack of an authority to plead invalidate the instant Application? Before addressing this issue, it is kind to note that the same is moot. The Applicant in the further affidavit already attached the authority to represent Bizrock in the proceedings herein. Nevertheless, the Applicant shall proceed to address the issue as raised. It has been held time without number that lack of an authority to plead or file a suit on behalf of a company does not invalidate any proceedings commenced on behalf of that company. This position was upheld by the Court of Appeal at Mombasa in *Spire Bank Limited vs Land Registrar & 2 Others* (2019)

eKLR, where the court stated thus: "...It is essential to appreciate that Order 4 rule 1 (4) intended to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This addressed the mischief of unauthorized persons instituting proceedings on behalf of corporations and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such an officer to demonstrate that they were authorized under the company sealith this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized." 16. As per the above authority which has been cited with approval in many similar cases, the court was emphatic of the position that failure to file a physical authority to plead in court does not mean that a deponent does is not authorized. As such, the burden of proving lack of authority of the said deponent is upon the person alleging so. In the instant case, the Respondent has not furnished such evidence. Similarly, Ramji Naran Patel, the deponent of the Supporting Affidavit dated 30 July, 2025 is the Appellant/Applicant's director. This is evidenced in paragraph I of the said affidavit where he clearly stated; "That I am an adult person of sound mind and disposition, the director of the Appellant/Applicant herein, fully conversant with this matter and duly authorized to make and swear this affidavit." The above statement alone is conclusive proof that the deponent of the Supporting Affidavit is duly authorized by the Appellant/Applicant. On the same note, the Appellant/Applicant can file an authority to plead at any time with leave of the court if need be. Therefore, the

Respondent's attempt to defeat the Appellant/Applicant's application on this ground must fail.

Respondent's submissions

7. Whether the Appeal is arguable with reasonable prospects of success- the threshold for stay pending appeal requires the Appellant to demonstrate an arguable appeal that is not frivolous, as enunciated in *Butt v Rent Restriction Tribunal* [1982] KLR 417, where the Court of Appeal held that the discretion to grant stay should be exercised only where the appeal has a reasonable chance of success and would otherwise be rendered nugatory. In the instant case, the appeal is wholly frivolous and lacks any prospects of success, as the lower court's Ruling is unassailable on both law and fact. The Ruling correctly applied the principles on striking out pleadings under Order 2 Rule 15 of the Civil Procedure Rules, 2010, as expounded in *D.T. Dobie & Company (Kenya) Ltd v Muchina* [1982] KLR 1, where Madan JA (as he then was) cautioned that striking out is a draconian remedy to be invoked sparingly, only in plain and obvious cases where the suit is so hopeless that it cannot be cured by amendment. The lower court, after a cursory examination of the pleadings, found that the Respondent's Statement of Claim raises bona fide triable issues, including economic duress vitiating the discharge agreement as expounded in the Supreme Court case of *Kenfreight (EA) Limited v Benson K. Nguti* [2016] eKLR and procedural impropriety in retrenchment under Section 40(1)(b) of the Employment Act, 2007 as expounded in the case of *Elizabeth Washeke & 62 Others v Airtel Networks Kenya Ltd. & Another* [2022] eKLR). These findings align with *Patel v E.A. Cargo Handling Services Ltd* [1974] E.A. 75, emphasizing that courts must dispense substantive justice and allow triable

issues to proceed to full hearing unless the suit is a sham. The Appellant's/Applicant's selective reliance on Coastal Bottlers Ltd v Kimathi Mithika [2018] eKLR is misplaced and does not render the appeal arguable, as that case is distinguishable for lacking evidence of coercion or duress factors abundantly present here, where the Respondent was compelled to sign amid withheld dues and financial distress. Moreover, the lower court duly considered precedents from superior courts, including the Supreme Court's dicta in Kenfreight (as submitted by the Claimant/Respondent in the lower court) on the invalidity of agreements under duress, and the non-waivable nature of statutory entitlements under Section 3(6) of the Employment Act, 2007. We thus humbly submit that the Appellant cannot fault the Ruling for disregarding Court of Appeal precedents when the Respondent's submissions cited countervailing authorities also from the Court of Appeal supporting inquiry into termination fairness. Further, the Appellant is estopped from impugning the suit's merit under the doctrine of approbation and reprobation, having previously filed a Response to the Memorandum of Claim and consented to fixing hearing dates on 5th March 2025. This conduct affirms the suit's viability, rendering the application dated 11th March 2025 and the instant appeal an afterthought. It is thus our humble submission that appeals must not be used to frustrate legitimate claims, a principle equally applicable here. The appeal, therefore, lacks arguable grounds and should not warrant halting proceedings. b) Whether the Appellant/Applicant will suffer substantial loss or irreparable harm if the stay is not granted, and conversely, the prejudice to the Respondent if it is. That under Order 42 Rule 6(2)(a) of the Civil Procedure Rules, 2010, the Appellant/Applicant must prove substantial loss and irreparable harm that would render the appeal nugatory if stay is denied as was observed in the case of Silverstein v Chesoni [2002] 1 KLR 867; Mukuma v Abuoga where the Court of Appeal pronounced itself as follows: "...Finally, we are satisfied that even though the

appellant may have an arguable appeal, he has not satisfied us that if we do not grant to him the stay of proceedings, his appeal in this Court will be rendered nugatory. The applicant was bound to satisfy us on both points and having failed to so satisfy on the second requirement, his application for stay must fail.” Substantial loss connotes more than mere inconvenience; it requires evidence of grave, uncompensable prejudice which the Appellant has not shown in the present case. The Appellant/Applicant has adduced no such evidence, merely speculating prejudice from proceeding to trial. If the lower court determines the suit in the Respondent's favour, the Appellant/Applicant can appeal the final judgment, preserving its rights without nugatory effect. Conversely, granting the stay would inflict substantial loss on the Respondent, who has been unemployed since 1st October 2024, suffering financial hardship without terminal dues. Delay exacerbates this prejudice, denying timely access to remedies under Section 49 of the Employment Act, 2007. It is trite law that stay should not result in greater hardship to the Respondent, tilting the balance of convenience as expounded in *Giella v Cassman Brown & Co. Ltd* [1973] E.A. 358 against the Appellant/Applicant here. We humbly submit that employment disputes, involving livelihood, demand protection from dilatory tactics as was observed in *Kenya Tea Growers Association v Kenya Plantation and Agricultural Workers Union* [2012] eKLR, where the court emphasized expeditious resolution to avert economic harm to workers. That the purpose of stay, is to preserve the subject matter, not to indefinitely suspend proceedings where no irreparable harm is shown. Here, continuing the suit preserves the status quo by allowing adjudication on merits, without prejudicing the Appellant's/Applicant's appellate rights. c) Whether the Application was filed without unreasonable delay. Order 42 Rule 6(2) (a) mandates applications be made without unreasonable delay. The impugned Ruling was delivered on 23rd June 2025, yet the Application was filed on 30th July 2025 over a month

later without explanation. This inordinate delay, rendering the Appellant/Applicant guilty of laches, is fatal. The Appellant/Applicant cannot fault the lower court's pre-trial directions of 28 the July 2025, as no stay was sought or in place, and appeal pleadings were unserved as captured in the Respondent's Replying Affidavit. d) Whether public policy and constitutional principles in employment law militate against granting the stay. Public policy dictates against using appeals to evade statutory obligations, especially in unequal employment relationships as was rightly observed by the Supreme Court in the case of Kenfreight (EA) Limited v Benson K. Nguti [2016] eKLR). Article 41 of the Constitution guarantees fair labour practices, including prompt dispute resolution. Granting stay contravenes Article 159(2)(b) and Section 20 of the Employment and Labour Relations Court Act, 2011, mandating expeditious disposal a position upheld in the case of Kenya Tea Growers Association v Kenya Plantation and Agricultural Workers Union [2012] eKLR, which stressed quick resolution to protect workers' rights.

Decision

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 for a ruling delivered on the 26th June 2025, and the application was filed on the 30th July 2025. The memorandum of appeal filed with the application raised issue of the discharge agreement having settled any issue between the parties thus arguable issues disclosed. The applicant was supported by the Applicant’s director hence no need to file authority to plead as submitted by the applicant.

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." Failure to stay the proceedings before the lower court would render the appeal proceedings academic. 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 30th July, 2025 is allowed.

11. Cost of the application to the respondent in the cause.
12. The appeal to be fast-tracked. The appellant has to file a record of appeal within 30 days. Mention on the 16th January 2026 for further directions.
13. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF DECEMBER, 2025.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Mr Manyara h/b Ochieng

Respondents – Monyange

ORIGINAL