

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC CAUSE NO. E723 OF 2022**  
***(Before Hon. Lady Justice Hellen Wasilwa, J)***

**KENYA CONCRETE, STRUCTURAL,  
CERAMIC TILES WOODPLY AND  
INTERIOR DESIGN WORKERS UNION .....  
CLAIMANT**

**VS**

**KENYA BUILDERS AND  
CONCRETE .....RESPONDENT/APPLICANT** **CO.**

**RULING**

- 1 The Respondent/Applicant filed a notice of motion application dated 21<sup>st</sup> October 2025 seeking orders that: -
- a) *spent*
  - b) *this Honourable Court be pleased to order stay of execution of the Judgment delivered on 25<sup>th</sup> September 2025 by the Honourable Lady Justice Hellen Wasilwa and any consequential orders arising therefrom pending the hearing and determination of this Application.*
  - c) *this Honourable Court be pleased to order stay of execution of the Judgment delivered on 25<sup>th</sup> September 2025 by the Honourable Lady Justice Hellen Wasilwa and any consequential orders arising therefrom pending the hearing and determination of the intended Appeal.*
  - d) *the Honourable Court be pleased to issue any such further orders as it may deem fit in the interest of Justice.*
  - e) *the costs of this application abide by the outcome of the Appeal.*

## **Respondent/Applicant's Case**

- 2 The Applicant avers that this court delivered its judgment in this matter on 25<sup>th</sup> September 2025, in favour of the Claimant.
- 3 The Applicant avers that aggrieved and dissatisfied with the judgment it has initiated an appeal by filing a Notice of Appeal dated 2<sup>nd</sup> July 2025 within the statutory period of 14 days.
- 4 The Applicant avers that it has also requested for typed proceedings and copies of the judgment relating thereto to facilitate preparation of the Record of Appeal.
- 5 The Applicant avers that the Claimant/Respondent has served it with a copy of the decree, thus, if stay of execution orders are not granted, it will proceed with execution of the Decree denying the Applicant a chance to prosecute its intended appeal.
- 6 The Applicant avers that in the event that the Claimant/Respondent proceeds with execution of the award before the hearing and determination of the intended Appeal against the award, the subject matter of the appeal would be rendered nugatory and the Applicant will suffer irreparable loss and damage as the grievant will not be in a position to refund it in the event the appeal succeeds.
- 7 The Applicant contends that it stands to suffer substantial loss unless this court grants the orders sought in the instant Application as there is real and actual threat of execution against the Applicant despite its intent to appeal against the decision of this court.
- 8 The Applicant avers that at present, the costs as awarded by this court have not been assessed, therefore, the exact sums payable by it is not known. Execution at this stage would therefore be premature, unjust and prejudicial to itself.
- 9 It is the Applicant's case that the application has been made without inordinate delay.

10 It further avers that it is willing to abide by the terms that this court may deem fit to order including deposit of half the Judgment sum as a security for costs in a joint interest earning account or in Court, pending hearing and determination of the intended appeal.

**Claimant/Respondent's Case**

11 In opposition, the Claimant/Respondent filed a replying affidavit dated 29<sup>th</sup> October 2025, sworn by Secretary General, Dishon Angoya.

12 The Respondent avers that the decree the Applicant/Respondent is seeking to stay is a monetary decree as such the court should be hesitant to issue orders for stay as sought.

13 The Claimant/Respondent avers that the decretal amount in question is not substantial and that the Applicant/Respondent has not discharged the burden of proving that the Claimant/Respondent has no means of refunding the decretal amount upon the success of the intended appeal.

14 The Claimant/Respondent avers that the Applicant has not adduced any evidence and/or demonstrated how the company will suffer reputational damage in the event they are not granted the stay orders.

15 The Claimant/Respondent avers that orders of stay of execution of Decree sought for by the Applicant/Respondent should not be granted until the Applicant deposits the whole sum of Ksh.1,035,660 in court as security, pending the hearing and determination of the intended appeal which sum is the total award to the grievants.

16 It is the Claimant/Respondent's case that it is common practice that the court will not order stay of execution for money decrees unless special circumstances are proved which including the regularity of the impugned judgment being in issue. Under the circumstances, the Applicant has not proven this fact.

## **Respondent/Applicant Submissions**

- 17 The Respondent/Applicant submitted that Article 164 (3) of the Constitution as read with Section 17 of the Employment and Labour Relations Act grants the Applicant the inalienable right of appeal. In exercising this right and being dissatisfied with the judgement of this court, the Applicant has lodged a Notice of Appeal dated 29<sup>th</sup> September, 2025 within the statutory timelines.
- 18 The Respondent/Applicant submitted that the intended appeal raises substantial and/or weighty issues of law and seeks the court's discretion for grant of the stay of execution orders to enable it to ventilate its appeal before the Court of Appeal.
- 19 The Applicant submitted that the fact of an intended appeal pending in the Court of Appeal is not contested, forms the first watershed in maintaining the status quo during the appeal's pendency. Therefore, parties should expend their energy in pursuing the appeal instead of seeking to execute a decree which is a subject of an appeal as this would render the intended appeal nugatory.
- 20 The Applicant submitted that the ELRC (Procedure) Rules 2024 on stay of execution in case of appeal provides:- "21. (1) Where an application for stay of execution pending appeal has been lodged, the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court. (2) An application for stay of execution pending appeal shall be filed in the appeal file."
- 21 Additionally, Order 42 Rule 6 (2) of the Civil Procedure, 2010 provides for the parameters to be considered by this Court when granting orders of stay of execution as follows:-

*"(2) No order for stay of execution shall be made under sub rule (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 may ultimately be binding on him has been given by the applicant.”*

22 The Applicant submitted it will stand to suffer substantial loss in the event stay of execution is not granted given that the matter remains pending at appeal. As it may not recover the decretal sum from the Claimant/Respondent and as a result this application and the intended appeal will be rendered nugatory.

23 It is the Applicant’s submission that the burden of proving the ability to refund the decretal sum lies with the grievants. The grievants have not filed any Affidavit of means to demonstrate their capability to refund the decretal sum plus costs.

24 The Applicant placed reliance in a decision from the High Court of Uganda at Kampala in ***Sewankambo Dickson Vs. Ziwa Abby HCT-00-CC MA 0178 of 2005*** wherein it restated that:

*“...substantial loss is a qualitative concept. It refers to any loss, great or small, that is real worth or value, as distinguished from a loss without value or loss that is merely nominal...insistence on a policy or practice that mandates security, for the entire decretal amount is likely to stifle possible appeals –especially in a Commercial Court, such as ours, where the underlying transactions typically tend to lead to colossal decretal amounts”.*

25 The Applicant submitted that it filed its application for stay orders promptly, expeditiously and without unreasonable delay.

26 On security of costs, it submitted that it is ready to deposit a portion of the award into this Court as security and should the appeal fail it will easily pay the decretal sum and costs as directed by the Court.

### **Claimant/Respondent’s Submissions**

- 27 The Claimant/Respondent submitted that the decree the Applicant is seeking to stay its execution is a monetary decree and as such the Court should be hesitant to grant such orders as sought by the Applicant.
- 28 The Claimant/Respondent submitted that the decretal amount in question being an award of the Court to the named grievants in the judgment is not substantial and that the Applicant has not discharged their burden of proving that the Respondent/Claimant has no means of refunding the decretal amount upon the success of the intended appeal.
- 29 It is the Claimant/Respondent's submission that the Court should decline to grant orders for stay of execution of judgment/decreed sought by virtue of the Applicant has failed to demonstrate how the company will suffer reputational damage in the event they are not granted the stay orders.
- 30 The Claimant/Respondent submitted that it is common practice that the Court cannot grant orders for stay of money decree unless special circumstances are proven which include the regularity of the impugned judgment being in issue. In the instant case, the Applicant has not proven that the regularity of the judgment delivered on the 21<sup>st</sup> September, 2025 is in issue and as such the Court should be hesitant.
- 31 The Claimant/Respondent submitted that the Court issues orders for stay of execution of judgment/decreed, the Applicant should be caused to deposit the entire amount in respect of the award in the judgment delivered on the 21<sup>st</sup> September 2025 totaling to Ksh.1,035,660 in to the account of the court pending the hearing and determination of the intended appeal.
- 32 The Claimant/Respondent submitted that the Applicant has not fully met the requirements to warrant the court grant them the orders of stay of execution of judgment/decreed within the provisions of Rule 21 of the Employment and Labour Relations Court (Procedure) Rules.

2024 as read together with Order 42 rule 6 of the Civil Procedure Rules, 2010 and as such the Court should decline to issue the orders sought in the application for stay of execution of Judgment dated the 21<sup>st</sup> October, 2025.

- 33 I have examined all the averments and submissions of the parties herein. The applicant seeks stay orders pending appeal being dissatisfied with this court's judgment dated 25/9/25.
- 34 Under order 42 rule 6(2) of the Civil Procedure Rules 2010 parameters of stay are granted and this includes a demonstration that the applicant will suffer substantial loss if the orders of stay are not granted. The applicant has demonstrated that they have filed an appeal as per the notice of appeal dated 29/9/25.
- 35 By virtue of this fact and in order to preserve the substratum of appeal, I will allow the application for stay on condition that the entire decretal sum be deposited in a joint interest earning account held in the names of counsel on record within 60 days in default, execution may proceed. Costs to abide the outcome of the appeal if at all.

**Dated, Signed and Delivered Virtually at Nairobi this 14<sup>th</sup> Day of January, 2026.**

**HELLEN WASILWA  
JUDGE**