

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA

CAUSE NO. E067 OF 2025

[Formerly Nairobi ELRC Cause No. E524 of 2025]

KENYA CHEMICAL WORKERS UNION ..... CLAIMANT

VERSUS

KRYSTALLINE SALT LIMITED ..... RESPONDENT

### RULING

The respondent, Krystalline Salt Limited, filed an application dated 5 November 2025 under Rule 21 of the Employment and Labour Relations Court (Procedure) Rules and Order 42 rule 6 and Order 51 rule 1 of the Civil Procedure Rules seeking the court to stay the execution of the judgment herein delivered on 30 October 2025 pending the hearing and determination of the intended appeal.

The application is supported by Hasmita Patel, a director, who avers that following the judgment herein on 30 October 2025, the respondent has filed a notice of appeal. The right of appeal is a constitutional right. The orders directing the claimant to submit a CBA to the respondent by 7 November 2025 and to conclude the same within 21 days raise trial issues for appeal. The court erred in severing the ongoing statutory obligation to bargain under section 57 of the Labour Relations Act (LRA) from the continuous requirement of a simple majority under section 54 of the LRA. This creates a legal friction that a trade union's mandate is perpetual despite a catastrophic collapse in membership.

In her Supporting Affidavit and Further Affidavit, Ms Patel avers that the court erred in failing to appreciate that the claimant has 2 members out of the 582 unionisable employees and has no mandate to negotiate a CBA. The court has been unable to appreciate the principles in *Teachers Service Commission v Kenya National Union of Teachers & 3 others*, namely that where union membership fluctuates, it ceases to have any meaningful representation of the employees.

The failure to refer the matter to the National Labour Board was in error, and hence the respondent has a good appeal from the judgment, which should be allowed to proceed to determination. The orders ought to issue with a stay of execution of the judgment herein pending the hearing of the intended appeal.

In reply, the claimant filed the Replying Affidavit of Peter Ouko Onyango, the national secretary general, who avers that the instant application is predicated on the mandate of the union, whose mandate crystallized in the Recognition Agreement dated 12 September 2024, as having no effect. However, such a recognition agreement gave the claimant the mandate to proceed and negotiate a CBA for the respondent's unionisable employees. A Recognition Agreement is not a casual commercial contract that can terminate at will. The judgment herein addressed the legal effects of the recognition of the claimant by the respondent, hence directed parties to proceed with CBA negotiations.

Onyango avers that the alleged decline in membership is not voluntary but is attributable to the respondent's bad faith, which has created a hostile working environment. This is an effort to block the claimant's recognition status.

Under sections 54 and 57 of the LRA, upon the Recognition Agreement, the next logical step for the parties is CBA negotiations. The instant application does not address any of the grounds warranting a stay of execution and should be dismissed with costs.

#### Determination

Upon the affidavits and written submissions, the single issue that emerges for determination is whether the order of stay of execution of the judgment herein delivered on 30 October 2025 should be issued.

Indeed, the respondent's application is anchored in Order 42, Rule 6, of the Civil Procedure Rules. Under these provisions, the governing principles are that the applicant must demonstrate the substantial loss to be suffered, there is an arguable appeal, and there is no delay in filing the application. The applicant must offer security for the due performance of the judgment.

In this court, an applicant seeking a stay of execution of the court's judgment is guided by principles outlined in Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, read together with Order 42 Rule 6 of the Civil Procedure Rules. The governing principles are;

- a) That a substantial loss may result to the applicant unless the order is made.
- b) Application has been made without unreasonable delay.
- c) Security as the court orders for the due performance.

The respondent has applied for a stay of execution of the judgment herein. The basis is that it intends to file an appeal. Hence. There is no pending appeal, but the notice of appeal demonstrates the intention.

The loss to be suffered if the order of stay of execution of the judgment orders on 30 October 2025 is not addressed, save to urge the court that there is an arguable appeal.

The principles for the grant of a stay of execution are principally the substantial loss to be suffered if the orders sought are not granted. The Orders of 30 November 2025 were in effect to provide parties with a timeline for negotiating a CBA under the Recognition Agreement. The rights now defined by the respondent in the instant application do not address the principles relevant to the orders sought.

The claimant holds a valid judgment and has a legitimate expectation that it should be enforced, as established in **Mwangi t/a Karinga Mwangi & Company Advocates v RAEI Investment Limited; Wanyama & another (Interested Parties) [2025] KEELC 6097 (KLR)**.

Without the respondent addressing the core principle under Order 42 rule 6, whether there are grounds of appeal or not is immaterial.

**No order for stay of execution shall be made under sub-rule (1) unless—**

- (a) The court is satisfied that a 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.**

Under Order 42 rule 6, an applicant is required to demonstrate what substantial loss is to be suffered if the order of stay is not granted, as held in **James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR**, that:

*No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to , the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.*

The issue of substantial loss is the cornerstone of an application seeking a stay for execution pending the hearing and determination of an appeal. This is not a money decree. It is the enforcement of the claimant's rights under the LRA upon the Recognition Agreement. A stay of execution application is a discretionary order. The applicant must demonstrate what loss is to be suffered, as held in **Kenya Shell Ltd v Kibiru & another [1986] eKLR**. The court should seek to balance the rights of the parties and consider that the party with a valid judgment has a legitimate expectation to enjoy the fruits of its judgment. Hence, substantial loss in its various forms is the cornerstone for granting a stay. Without evidence of what loss is to be suffered, an applicant fails in a cardinal principle.

**In the absence of the loss to be suffered if the stay is not granted, the application dated 5 November 2025 is rendered without merit. The same is dismissed with costs to the claimant.**

Delivered in open court at Mombasa, this 22<sup>nd</sup> day of January 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and .....

