

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
APPEAL NO. E024 OF 2025

LUANDA HAPPY DAY ACADEMY1ST APPELLANT

THE BOARD OF MANAGEMENT

LUANDA HAPPY DAY ACADEMY 2ND APPELLANT

-VERSUS-

LAMECK FRANCIS LITIEKA RESPONDENT

*(Being an appeal from the judgment and decree issued in Vihiga CMC
ELRC No. E001 of 2021 by Hon. Beryl M. Omolo (SRM) delivered on
13th August 2025)*

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. In a judgment dated and delivered on 13th August 2025 the respondent (the claimant in the lower trial court) was awarded against the appellant (the respondent in the lower trial court) in the following terms –

- 1. Salary for April 2020 to December 2020 at Kshs. 198,000/=.***
- 2. Compensation for unfair termination pursuant to Section 49(1) of the Employment Act (22,000/= x 6) = Kshs.***

132,000/=.

3. *One month's salary in lieu of notice at Kshs. 22,000/=.*
 4. *Interest on (2) above court rates from the date of judgment until payment in full.*
 5. *The respondents to bear the costs of this suit.*
2. In a notice of motion dated 25th September 2025 (the application) filed through Otieno & Amisi Advocates, the appellants/applicants/decreed-holder are seeking for the following orders –
1. *THAT this application be certified urgent, service thereof be dispensed with and the same be heard ex parte in the first instance.*
 2. *THAT the honourable court be pleased to order a stay of execution of the judgment delivered herein on 13/08/2025 and all other orders and process consequential therefrom pending the hearing and determination of this application inter partes.*
 3. *THAT the honourable court be pleased to extend the time within which the appellant may appeal from the judgment delivered on 13/08/2025 and/or admit the appeal filed herein out of time.*
 4. *THAT the honourable court be pleased to order a stay of execution of the judgment delivered herein in 13/08/2025*

and all other orders consequential therefrom pending the hearing and determination of the appeal.

5. THAT the costs of this application be in the cause.

3. Dissatisfied with the above judgment and the decree, the appellants intend to file an appeal on a variety of grounds as per the annexed draft memorandum of appeal praying for the setting aside of the entire judgment and the decree.
4. The application is expressed to be brought pursuant to **Order 42 Rule 6 & 50 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B, & 3A of the Civil Procedure Act & all other enabling provisions of the law**. The application is based on the grounds stated on the face of it and supported with the affidavit of Lucy Mandela Tiang'a, sworn on even date with several annexures thereto.
5. In opposition to the application the respondent through Kagna & Advocates filed grounds of opposition dated 6th October 2025.
6. By consent, the application was canvassed by way of written submissions. Counsel for the appellant filed written submissions dated 4th November 2025 and counsel for the respondent filed submissions dated 3rd November 2025.

II. THE EVIDENCE

7. The evidence on record as per the supporting affidavit is that judgment was entered against the appellant in lower court in the sum of Kshs352,000/= plus costs and interest as alluded to in the

introductory part of this ruling.

8. It is deposed that the 1st appellant forms part of the estate of Joseph Akoya Tiang'a and Damaris Ayieko Joseph (both deceased). Lucy Mandela Tiang'a, the deponent, is one of the administrators of the said estate.
9. The appellants plead that they are ready and willing to abide with any terms and conditions that may be imposed for stay of execution to issue pending the hearing and determination of the intended appeal.
10. It is deposed that the respondent's assets and properties are unknown and that if the execution proceeds and the appeal ultimately succeeds the appellant shall not be able to recover the paid amounts hence rendering the appeal nugatory.
11. On the delay in filing of the appeal, it is deposed that the beneficiaries of the estate of the owners of the original owners of the 1st respondent have not been able to settle on the administration and distribution of the estate and the 2nd appellant has not been fully reconstituted hence the delay.
12. As noted in the introductory part of this ruling, the factual aspects of the application were not attacked by the respondent who only filed grounds of opposition.

III. SUBMISSIONS BY COUNSEL

13. Counsel for the appellant isolated two issues for determination –
- i. *Whether an order of stay of execution of the judgment dated 25/09/2025 ought to issue pending determination of the Appeal?*
 - ii. *Whether this honourable court should extend the time within which the appellant and or admit the appeal herewith out of time?*
14. Citing ***Vishram Ravji Halai V Thorton & Turpin (1990) KLR 365***, it is submitted on the first issue that the discretion of the court to order stay of execution is unfettered upon an applicant meeting the conditions set out in ***Order 42 Rule 6(2) of the Civil Procedure Rules***.
15. It is submitted that the application has been filed without delay and the appellants are ready and willing to abide and comply with any conditions that may be set by the court. It is further submitted that if the execution is allowed to proceed the appeal shall be rendered nugatory as the learning activities in the school shall stall. It is submitted that the appellants have an arguable appeal based on the grounds contained in the draft memorandum of appeal attached to the application.
16. On the second issue, counsel cited ***Rules 12 & 18 of the Employment and Labour Relations Court (Procedure) Rules*** to the effect that this court has powers to enlarge the period within

which an appeal may be filed. Further citing the decision in *Paul Musili Wambua V Attorney General & 2 Others (2015) eKLR*, it is submitted that the court may extend and or enlarge the time of filing an appeal on reasonable grounds. It is submitted that considering the reasons advanced – the issues related to the administration of the estate and also that the delay in filing of the appeal was only 14 days as at the time of filing this application – the court should exercise its discretion in favour of the intended appellants.

17. It is emphasized that the appeal raises arguable and triable issues and the court is thus urged to allow the applicants a chance to ventilate the same to avoid rendering the same nugatory and or occasioning injustice to the intended appellants.
18. Counsel for the respondent submitted that the reason given for the delay in filing of the appeal is insufficient. It is submitted that the administrators of the estate of the deceased persons obtained the grant way back in 2022 and they were such administrators as at the time the judgment in the lower trial court was delivered.
19. It is further submitted, although without any elaboration, that the intended appeal is without merit and the same is neither arguable nor does it raise triable issues.
20. On the request for stay of execution, it is submitted that the intended appellants have not demonstrated a case to deny the

respondent enjoying the fruits of a lawful judgment at this point. It is submitted that the applicants have failed to satisfy the conditions set out in ***Order 42 Rule 6(2) of the Civil Procedure Rules***.

21. The court is urged to dismiss the application with costs.

IV. ISSUES FOR DETERMINATION

22. The court has gone through the application, the supporting affidavit thereof, the grounds of opposition, and the submissions filed by counsel for the parties. In my view, there is only one main issue for determination - ***Whether the application has merits as to entitle the applicants to the orders sought.***

V. ANALYSIS & DETERMINATION

23. The application is seeking for stay of execution and enlargement of time within which to file an appeal. For the first part, the terms and conditions for granting stay of execution are stated and provided for under ***Order 42 Rule 6(2) of the Civil Procedure Rules***.

24. As for the extension of time for filing an appeal, ***Rule 18 of the Employment and Labour Relations Court (Procedure) Rules*** provides that – ***The court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any other document relating to an appeal.***

25. The jurisprudence on stay of execution and filing of an appeal out of time is almost exhausted and all decisions revolve around the

provisions of the law cited above. However, the bottom-line is the duty and obligation of the court to be fair and just in balancing the competing interests of the judgment-debtor and those of the judgment-creditor.

26. In this ruling, the court is not going to engage in the lengthy analysis of the evidence adduced and the submissions by counsel. In my considered view, the court ought to firstly secure the decretal sum plus costs this far due and payable. Secondly, the court should consider the delay and the reasons given therefor in filing of the intended appeal. Certainly, delay in settlement of the decretal sum plus costs can be compensated by way of costs and interest in case the appeal ultimately fails.
27. On the first issue, the court shall allow stay of execution on the condition that the decretal sum and costs in the sum of Kshs352,000/= shall be deposited with the court within 30 days of this ruling.
28. On the second issue, the court notes the reasons given for the delay in filing of the appeal. The same – problems in administration of the estate of the deceased persons - may not be the most convincing but, without prejudice, the court has also read the grounds of the proposed appeal as per the draft memorandum of appeal.
29. In the circumstances, the court directs the applicants to file and serve their appeal within 60 days of this ruling complete with the

record of appeal.

30. Failure to comply with any of the above cumulative conditions shall lapse the stay of execution and also extinguish the extended time of filing the appeal.

VI. ORDERS

31. Flowing from the foregoing, the court makes the following orders –
- a) An order for stay of execution be and is hereby issued pending the hearing and determination of the intended appeal on the condition that the decretal sum plus costs in the sum of Kshs352,000/= shall be deposited with the court within 30 days of this ruling.*
 - b) The appellants are hereby granted leave to file and serve the intended appeal within 60 days of the date hereof complete with the record of appeal.*
 - c) Any default in complying with (a) and (b) above (cumulatively) shall lapse both the stay of execution and the leave to appeal out of time.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 15TH DAY OF JANUARY, 2026.**

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DAVID NDERITU
JUDGE