



REPUBLIC OF KENYA



KENYA LAW
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Musembi & another v Buckram Security Limited (Employment and Labour Relations Cause E584 of 2022) [2026] KEELRC 22 (KLR) (14 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 22 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E584 OF 2022**

**HS WASILWA, J
JANUARY 14, 2026**

BETWEEN

SAMMY MUSEMBI 1ST CLAIMANT

SEBASTIAN MUNOKA MAKOKHA 2ND CLAIMANT

AND

BUCKRAM SECURITY LIMITED RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 12th November 2025 seeking orders that: -
 - a. Spent
 - b. this Honourable Court be and is hereby pleased to stay execution of the Judgment, Decree and Order granted by Honourable Lady Justice Hellen Wasilwa on 21st January, 2025, pending the hearing and determination of this Application.
 - c. this Honourable Court be and is hereby pleased to stay execution of the Judgment, Decree and Order granted by Honourable Lady Justice Hellen Wasilwa on 21st January, 2025, pending the hearing and determination of the intended Appeal herein.
 - d. the costs herein be in the cause hereof.

Respondent/Applicant's Case

2. The Applicant avers that this court delivered judgment in favour of the Respondents on 21st January 2025 and subsequently by a ruling dated 30th October, 2025, the Hon. Deputy Registrar granted the Respondents/Claimants costs amounting to Kshs. 142,975.



3. The Applicant avers that on 5th November, 2025, the Respondents/Claimants through Moran Auctioneers purported to issue it with Proclamation by dated 5th October 2025; Warrants of Attachment of Movable Property in execution of decree for money; Warrants of Sale of Movable Property in execution of decree for exaggerated amount of Kshs. 705,623 and Moran auctioneers exaggerated charges of Kshs. 168,532.
4. It is the Applicant's case that the Respondents' auctioneers may cart away its movable property at any time and prejudice it unless a stay of execution is granted by this court.
5. The Applicant avers that the Respondents' Auctioneers, Moran Auctioneers have acted unlawfully, illegally and in grave violation of Rule 12 of the *Auctioneers Act*.
6. The Applicant avers that it has duly applied for court proceedings vide a letter dated 3rd February, 2025 and immediately served upon the Respondents within the stipulated statutory time together with a Notice of Appeal dated even date and duly approved by the Hon. Deputy Registrar on 11th February, 2025, however, it is yet to be supplied with proceedings.
7. The Applicant avers that it is entitled to appeal as of right to the Court of Appeal against the judgment and decree of this court under the *Labour Institutions Act*, The Employment and *Labour Relations Act* and Rules and Article 162 of the *Constitution*.
8. It is the Applicant's case that its appeal is arguable and has overwhelming chances of success.
9. The Applicant avers that unless this court grants a stay of execution, the Respondents will execute and the appeal will be rendered nugatory thus rendering it to suffer grave prejudice and loss.
10. The Applicant avers that it is apprehensive because the Respondents/Claimants may not have means to refund the Applicant any amount paid in execution of the decree in the event the intended appeal succeeds.

Claimants/Respondents' Case

11. In opposition to the application, the Respondents filed a replying affidavit dated 20th November 2025, sworn by the 1st Claimant/Respondent.
12. The Respondents aver that the court entered judgment against the Applicant on 21st January 2025 in the sum of Kshs. 504,645.5 and costs taxed at Kshs. 142,975 together with interests of Kshs. 55,552.50 for 287 days and court collection fees of Kshs. 1,500 and further costs of Kshs. 950 totalling to Kshs. 705,623.
13. The Respondents aver that Applicant has only filed a Notice of Appeal and no substantive appeal has been filed since the delivery of the judgment, which is 10 months from the date of filing this application, hence this application aims to delay the matter hence frustrate them from enjoying the fruits of the judgment.
14. The Respondents aver that the Applicant has not filed an appeal thus the issue of whether the appeal has chances of succeeding or arguable cannot arise.
15. It is the Respondents' case that the Applicant has not offered to provide security for costs in the application despite the stay of execution of 30 days lapsing, therefore, it is evident that the Applicant are not willing to comply with the court orders.
16. The Respondents further aver that the Applicant has failed to satisfy the decretal sum and only filed the application for stay after the commencement of the execution process.



17. The Respondents aver that in the event that the court deems fit to order for stay of execution, the Applicant should deposit in court the entire decretal sum including the costs and interests as ordered by the court as security for costs.
18. The Respondents aver that the Applicant has not advanced sufficient grounds that warrant the orders of stay of execution, the auctioneers have since legally proclaimed the assets of the Applicant hence there is no legal provision that has been violated in the process.
19. The Respondents aver that the application is an abuse of the court process because it is sworn in bad faith with the intention of denying them the fruits of the judgment that was entered by the court hence it should be dismissed with costs.

Respondent/Applicant's Submissions

20. The Applicant submitted that it has duly filed and served a Notice of Appeal in accordance with the provisions of section 77 of the court of Appeal Rules 2022.
21. The Applicant submitted that in many applications seeking to stay enforcement of a court order pending the outcome in the Court of Appeal, courts have applied the key principle that the Applicant must satisfy that he will suffer substantial irreparable loss if the stay is not granted and the appeal succeeds. In the instant case, the Claimants appear to be men of straw and are very unlikely to refund the decretal amount if the appeal succeeds.
22. The Applicant submitted that every limb of the objection depends on disputed or contested facts, including: Whether the Applicant adopted, authorized or validated the disputed computations of Kshs. 18,421,704,159; Whether the reconciliation ordered by this Court has now produced a definitive and binding debt figure; Whether the Applicant is forum shopping or pursuing legitimate judicial clarification; Whether the Applicant's conduct amounts to delay or abuse.
23. The Applicant placed reliance in *Mwariama & 18 others (Suing on Their Behalf and on Behalf of About 3,000 Residents of Timau Area In Buuri Subcounty, Meru County) v National Land Commission & 5 others; Meru County & another (Interested Parties)* [2025] KEELC 8309 (KLR) wherein the court held: ".....the question as to whether the intended appeal before the court of appeal is arguable or otherwise does not fall for determination by this court. For good measure, the provisions of Order 42, Rule 6 of the Civil Procedure Rules which govern the grant of an order of stay of execution pending appeal or temporary injunction pending appeal, do not reference an arguable appeal as a condition for consideration. It is important to highlight that an arguable appeal is only a condition to be established in terms of Rule 5 (2) (b) of the Court of Appeal Rules....."
24. The Applicant submitted that it has met the conditions for stay of execution under Order 42 of the Civil Procedure Rules.
25. It is the Applicant's submission that it pursued and obtained interim orders issued by this court to preserve the substratum of this matter. The Respondents will not suffer any prejudice if stay is granted.

Claimants/Respondents' Submissions

26. The Respondent submitted that Respondent/Applicant has not satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for stay of execution pending appeal. Order 42 Rule 6(2) of the Civil Procedure Rules provides that an applicant should satisfy the court that: substantial loss may result to him/her unless the order is made; the application has been made without unreasonable



- delay; and the applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
27. The Respondent placed reliance in the definition of substantial loss in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR :-“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 say, 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.”
 28. The Respondent submitted that the Applicant has not shown what substantial loss it shall suffer in the event the orders of stay are not granted. On the other hand, the Respondents should not be denied the opportunity to execute the decree in order to enjoy the fruits of their judgment and that litigation must come to an end. They urged the court to be guided by *Chege v Gachora* [2024] KEHC 1994 (KLR).
 29. The Respondent submitted that the Applicant has not offered to provide sufficient security for costs in the Application despite the stay of execution of 30 days lapsing hence it is evident that the Applicant is not willing to comply with the court orders. They cited *Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others* [2014] KEHC 2430 (KLR) where the court stated:-“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor....Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 Rule 6 of the Civil Procedure Rules acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose. Evidently, the issue of security is discretionary and it is upon the court to determine the same. I have perused the court record and noted that the applicant has not offered any terms of security to warrant the application for stay.”
 30. The Respondent submitted that the Applicant has not indicated the readiness to furnish sufficient security for the due performance of the decree. They placed reliance in *Edward Kamau & another; v Hannah Mukui Gichuki & another* [2015] KEHC 7571 (KLR) and urged the court to employ a balancing act between the rights of the parties and if inclined to grant stay of execution then it should be on condition that the Applicant should deposit in court or in a joint interest earning account between the advocates on record for the Claimants and the Respondent the entire decretal sum including the costs and interests as ordered by the court as security for costs.
 31. It is the Respondents’ submission that the Applicant has only filed a Notice of Appeal and there is no substantive Appeal that has been filed so far from 21st January 2025 which is about 10 months so far hence aims at delaying the matter hence frustrate us in enjoying the fruits of the judgment. The Applicant has not filed an appeal and hence the issue of whether the appeal has chances of succeeding or arguable cannot arise.
 32. I have considered all the averments and submissions of the parties herein. The applicant herein has sought stay orders on the ground that they are dissatisfied with the orders and judgment of this court and have since filed a notice of appeal dated 3rd February 2025.



33. The applicants aver that the matter is currently pending before the Court of Appeal and the said appeal could be rendered nugatory if the orders are not granted.
34. It is indeed true that an appeal has been filed. It would therefore be prudent in the circumstances to allow stay orders in order to preserve the substratum of the appeal.
35. I therefore allow this application for stay pending appeal on the condition that the applicants deposit the entire decretal sum in a joint interest earning account held in the joint names of counsels on record within 60 days failing which execution may proceed . Cost to abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JANUARY, 2026.

HELLEN WASILWA

JUDGE

