

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

**CAUSE NO. E714 OF 2025**

*(Before Hon. Lady Justice Agnes Kitiku Nzei)*

**TERRY NJERI KARU .....CLAIMANT**

*VERSUS*

**MOTA-ENGIL ENGENHARIA E**

**CONSTRUCAO AFRICA.....RESPONDENT**

**RULING**

1. This Court delivered a Ruling on **31<sup>st</sup> October, 2025** and stated as follows:-

*"20. In the present suit, and as stated elsewhere in this Ruling, the Claimant's claim herein cannot be said to be a sham or entirely frivolous. The Claimant's claim has a prospect of success, **to some extent**. The application was filed contemporaneously with the suit. The Claimant's employment was shown to have been terminated **earlier** this year; and it*

*has not been denied that the Respondent, which is a foreign company, is in the process of relocating from Kenya to Ethiopia.*

21. *In view of all the foregoing, this Court can properly and justly exercise its discretion and order for provision of security before Judgment, not in the sum stated in the application, but as the Court considers proper and fair.*

22. *Consequently, and having considered the rival submissions filed on behalf of both parties, the Notice of Motion dated 25<sup>th</sup> July, 2025 is hereby allowed in the following terms:-*

***(a) The Respondent shall, within twenty one (21) days of today, deposit in this Court an amount of money that is equivalent to the Claimant's twelve (12) months' gross salary as at the time of termination, to be held in deposit by the Court until the suit herein is heard and determined; or until further Orders of the Court.***

**(b) The suit herein shall be fast-tracked, and shall be fixed for hearing.**

**(c) Costs of the application shall be in the main suit."**

2. Upon delivery of the Court's aforesaid Ruling on 31<sup>st</sup> October, 2025, Counsel for the Respondent/Applicant **applied orally for 30 days' stay and leave to appeal.** Counsel for the Claimant opposed the application for stay, and urged the Court to retain the 21 days' stay already given. The Court ordered as follows:-

**"(1) The Respondent has already been given 21 days to comply with the Orders contained in the Ruling delivered today (31/10/2025). That is sufficient time, in view of the circumstances of the suit herein. The prayer for 30 days' stay is declined.**

**(2) Leave to appeal is hereby granted."**

3. The Court's record shows that the Respondent filed a Notice of Appeal on 5<sup>th</sup> November, 2025, stating that it intended to appeal against this Court's aforesaid Ruling.

4. Subsequently, the Respondent/Applicant filed an urgent Notice of Motion dated **14<sup>th</sup> November, 2025** seeking the following Orders:-

(a) *That the application be certified urgent, and be heard ex-parte in the first instance.*

(b) *That pending hearing and determination of the application, there be a stay and/or suspension of the order made on 31<sup>st</sup> October, 2025 directing the Respondent to deposit in Court an amount equivalent to the Claimant's 12 months' gross salary within twenty-one (21) days.*

(c) *That pending hearing and determination of the Respondent's intended appeal to the Court of Appeal against the Ruling delivered on 31<sup>st</sup> October, 2025, there be a stay and/or suspension of the said order directing the Respondent to deposit in Court an amount equivalent to the Claimant's twelve (12) months' gross salary within twenty-one (21) days.*

(d) *That this Court be pleased to stay further proceedings in **ELRC Cause No. E714 of 2025** -*

**Terry Karu - vs - Mata -Engil Engenharia e construction Africa** pending hearing and determination of the Respondent's intended appeal to the Court of Appeal against the Ruling delivered on 31<sup>st</sup> October, 2025.

(e) *That costs of the application do abide the outcome of the intended appeal.*

5. The application sets out on its face the grounds upon which it is brought, and is based on the supporting affidavit of **JOA'O BARROS**, the Respondent/Applicant's Finance Manager, sworn on 14<sup>th</sup> November, 2025. It is deponed in the said supporting affidavit, ***inter-alia***:-

(a) *that the sum to be deposited is substantial, a total of **Kshs.5,080,400/=**, which is a significant cash flow burden for an interlocutory step.*

(b) *that if this Court does not stay its own order, the Respondent will be compelled to comply within 21 days, thereby **rendering the Respondent's appeal academic and nugatory**, yet the appeal is plainly arguable.*

(c) *that the Respondent remains present and operational in Kenya, maintains an office at Sanlam Towers, has ongoing operations and maintenance obligations for its projects in Kenya, and continues to engage Kenyan suppliers and staff; and that there is no real risk that the Claimant will be left without a defendant.*

(d) *that the Claimant will not suffer any prejudice if stay is granted because her claim is for money and the matter has already been directed to be fast-tracked; that it is the Respondent who stands to suffer disproportionate prejudice if compelled to lock up 12 months' salary at this stage.*

6. The Claimant/Respondent filed grounds of opposition **shown** to be dated 11<sup>th</sup> November, 2025, and opposes the application on the following grounds:-

(a) *That the application is incompetent and an abuse of the Court's process, as this Court already granted the Respondent a **21 - days stay** of the deposit order in its Ruling of 31<sup>st</sup> October, 2025. That the Respondent has not met the legal*

threshold under **Rules 21 and 73 of the ELRC (Procedure) Rules** for reopening or extending that stay.

- (b) That after filing a Notice of Appeal, the Respondent triggered the appellate process, and Jurisdiction to hear any stay pending appeal now lies exclusively with the Court of Appeal under Rule 5(2)(b) of the Court of Appeal Rules. That this Court is **functus officio** on the issue, and cannot grant the orders sought.
- (c) That the Respondent improperly invites this Court to sit on an appeal over its own Ruling, contrary to the constitutional hierarchy of Courts under **Article 162(2) & 165 of the Constitution of Kenya**, and the appellate framework under Section 12(5) of the ELRC Act.
- (d) That the Respondent **improperly seeks to re-litigate issues already determined by the Court**, contrary to Section 7 of the Civil Procedure Act, which bars re-opening of matters that have already been fully adjudicated.

- (e) That the Respondent is effectively asking the Court **to vary its own ruling without demonstrating any new facts or error apparent on the face of the record.**
- (f) That the Respondent has failed to satisfy the mandatory requirements for stay under **Order 42 Rule 6(2) of the Civil Procedure Rules; particularly the need to show substantial loss.**
- (g) That the application is an attempt to circumvent the Court's directive by delaying compliance until the expiry of the 21 days stay; which is a misuse of the Court's process; and amounts to forum shopping disguised as an interlocutory request.
- (h) That **the Claimant will suffer prejudice if the deposit order is suspended;** as the Court issued the order to specifically secure the Claimant's interest. That the Claimant suffers no prejudice from compliance.

7. The foregoing is the application before me for determination. Both parties filed written submissions on the application pursuant to the Court's directions in that regard.

8. Based on this Court's findings contained in its impugned Ruling delivered on 31<sup>st</sup> October, 2025, this Court gave the Orders which I preceded to set out in paragraph 1 of this Ruling; and which the Respondent/Applicant has already appealed against. The impugned Orders were made by this Court in exercise of its discretion, and upon full evaluation of the pleadings filed by both parties, the Claimant's Notice of Motion dated 25<sup>th</sup> July, 2025, affidavits filed by both parties and documents annexed thereto, the applicable law and all material facts and evidence presented.

9. This Court stated as follows in its said Ruling:-

***“8. It is to be noted that a company's continuing operations is not proved by the existence of a lease agreement, but by demonstrating legal continuity of the company's core operations within the areas and/or country of operation. The Respondent has not articulately***

***demonstrated continuity of its core operations in Kenya, and the remaining period of such operations. It is a common ground that the Respondent is a foreign company registered in Kenya and with operations in different countries. Continuing shipment of the Respondent's assets from Kenya to Ethiopia since October 2024, as deponed by the Claimant, has not been denied by the Respondent.***

***9. The Respondent has not stated what assets it has in Kenya, and the period of time that such assets are likely to remain in Kenya."***

10. It was on the basis of this Court's foregoing findings that the Respondent/Applicant's oral application for thirty days' stay of execution made upon delivery of the impugned Ruling was declined.

11. The Respondent/Applicant has come back to this Court seeking a stay of execution **pending appeal**, and has, in support of the application for stay, **re-packaged** matters

presented in opposition of the application giving rise to the impugned Ruling/Orders. This Court has already pronounced itself on the issue of provision of security before Judgment, and cannot sit on appeal over its own orders.

12. Order 42 Rule 6(2)(a) & (b) of the Civil Procedure Rules provides as follows; and in mandatory terms:-

**“(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 as may ultimately be binding on him has been made by the applicant.”**

13. The Respondent/Applicant has not demonstrated **what substantial loss or damage it will suffer** if the stay order sought is not granted, and has **not** demonstrated that the

intended appeal will be rendered **nugatory** if the orders sought are not granted.

14. Depositing in Court of the sum ordered will **not** render the appeal nugatory. In the event of the intended appeal succeeding, the amount so deposited will still be available. What a Court is required to do regarding applications for stay of execution pending appeal is to first **ensure that the intended appeal, if successful, is not rendered nugatory.**

15. The Court of Appeal (**Madan, JA**) stated as follows in the case of **Butt - vs - Rent Restriction Tribunal [1979]**

**eKLR:-**

***“ . . . It is the discretion of the Court to grant or refuse stay, but what has to be judged 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 to prevent the appeal, if successful, from being nugatory, per Brett L J in Wilson vs. Church (No.***

**2) 12 ChD (1870) 454 at p459. In the same case, Colton L J, said at p. 458:-**

***“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this Court has to see that the appeal, if successful, is not nugatory.”***

16. There being **no** possibility of the intended appeal being rendered nugatory, I **decline** to allow the prayer for stay of execution pending appeal.
17. The prayer for stay of proceedings pending appeal is also **declined**, as allowing the same will **expose the Claimant to the same prejudice that the impugned Orders were meant to prevent**. As ordered on 31<sup>st</sup> October, 2025, the suit herein shall be **fast-tracked**, and shall be fixed for hearing.
18. In sum, and having considered written submissions filed on behalf of both parties, I find **no** merit in the Notice of Motion dated 14<sup>th</sup> November, 2025, and the same is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS  
30<sup>TH</sup> DAY OF JANUARY 2026**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Kiamba for the Claimant/Respondent.

Miss Wekesa for the Respondent/Applicant.