



**Kiti v Convoy Trucking Limited (Appeal 315 of 2025)
[2026] KEELRC 218 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 218 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 315 OF 2025
JW KELI, J
JANUARY 23, 2026**

BETWEEN

MATANO JUMAA KITI APPELLANT

AND

CONVOY TRUCKING LIMITED RESPONDENT

RULING

1. The applicant was the claimant in the lower court. He obtained a default judgment which was set aside by the trial court upon application by the respondent. The ruling of the trial court was dated 15th September 2025 in Milimani CMELRC NO. 845 OF 2024. Aggrieved by the said ruling the applicant filed memorandum of appeal dated 16th September 2025 together with application by way of Notice of Motion dated 16th September 2025 for Orders-
 - a. Spent
 - b. That the Honorable Court be pleased to stay the execution of the ruling of the Honorable trial Court delivered on 15th September 2025 pending the hearing and determination of this application.
 - c. That the Honorable Court be pleased to stay the execution of the ruling of the Honorable trial Court delivered on 15th September 2025 pending the hearing and determination of this appeal.
 - d. That the Honorable Court be pleased set aside the ruling of the trial magistrate court delivered on 15th September 2025.
 - e. That the Honorable Court be pleased to order that status quo be maintained pending the hearing and determination of this application.



- f. That the Honorable Court be pleased to order that status quo be maintained pending the hearing and determination of this appeal.
- g. That the costs of this application be provided for.

Grounds of the application

2. That judgment in default was entered on 25-2-2025 by the trial court against the Respondent where the Applicant was awarded Ksh. 1,778,009.60.
3. That in execution of the judgment, motor vehicle KDE 262Z was proclaimed on 24-4-2025.
4. That on the same date, the Respondent appointed an advocate who filed an application to set aside the judgment delivered on 25-2-2025. That on 15-9-2025, in its ruling the trial court set aside the default judgment and ordered that the motor vehicle be released to the Respondent.
5. That the Respondent is at the blink of shutting down and motor vehicle registration number KDE 262Z is the only motor vehicle registered in the name of the Respondent as per our due diligence during application for execution a fact the Honorable trial Court was made aware of.
6. That therefore if the motor vehicle KDE 262Z is released to the Respondent the judgment of the Honorable Court and any other orders shall be an exercise in futility since the Applicant herein shall not be able to execute.
7. That if the motor vehicle is released without an order for the Respondent to deposit the decretal sum in the advocates joint interest earning account, then there is a high possibility that the Applicant shall be greatly prejudiced.
8. That the hearing of the matter has been stated for hearing on 2-9-2026, a year from now and more than one and a half years after judgment was entered against the Respondent.
9. That the Respondent has not met the cost of the yard storage fee and the auctioneer and the same shall have a negative impact on the Applicant herein if the motor vehicle KDE 262Z is released without the Respondent meeting the costs for the same.
10. The ends of justice shall be defeated and the appellant shall be greatly prejudiced unless this matter is heard with great urgency and when the prayers sought are granted.
11. The applicant supported the application through his affidavit sworn on the 16th September 2025 reiterating the above grounds of the application.
12. The respondent filed notice of appointment of Makezi Makungu Company Advocates who filed Notice of Preliminary Objection dated 22nd October 2025 as follows- That the Respondent herein raises a preliminary objection in limine to the appeal dated the 15th September 2025 and seeks to have the same struck out with costs to the Respondent on the following grounds: That the Appeal dated the 15th September 2025 is incompetent and defective for failing to comply with the Mandatory provisions of filing an appeal provided in Rule 11 and 15 of the Employment and Labour Relations Court (Procedure) Rules No. 133 of 2024.
13. On the 23rd October 2025, the court was informed that the Motor Vehicle which had been attached and subject of the instant application had been released. The court then declined to issue orders in the interim and directed for response to be filed and that the application be canvassed by way of written submissions. Only the respondent filed submissions which the court found were erroneously related to the appeal of which the record is yet to be filed.



14. The instant application seeks for order of a stay of execution of the ruling of the lower court dated 15th September 2025 pending the determination of the appeal. The said ruling was not annexed to the application. The court discerned from the supporting affidavit to the application that the lower court had in the impugned ruling ordered for setting aside of the default judgment and for release of Motor vehicle attached in execution of the Decree. The motor vehicle subject of the application having been released to the respondent, and without the court having sight of the impugned ruling, the court finds no basis for the consideration of whether to grant an order of stay.
15. The application is dismissed with costs to the Respondent to abide outcome of the appeal.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD JANUARY, 2026.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Applicant -absent

Respondent-Mukungu

