



**Daruun Energy Limited (Rubis Energy Kenya Ltd) v Mabele (Appeal E062 of 2025) [2026] KEELRC 351 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 351 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
APPEAL E062 OF 2025  
MA ONYANGO, J  
FEBRUARY 6, 2026**

**BETWEEN  
DARUUN ENERGY LIMITED (RUBIS ENERGY KENYA LTD) ..... APPLICANT  
AND  
EUGINE MABELE ..... RESPONDENT**

**RULING**

1. The application herein is dated 10<sup>th</sup> September, 2025. The Applicant seeks orders that: -
  - a. That this application be certified urgent and heard ex-parte in the first instance.
  - b. That this Honourable Court be pleased to issue an order of stay of execution of the judgment delivered on 30<sup>th</sup> July 2025 by Hon S.d Sitati in ELRC CAUSE NO E 37of 2024 and the resultant decree and warrants of attachment and proclamation notices dated [8<sup>TH</sup> September 2025] By [seventy Seven Auctioneers], pending the hearing and determination of this application and intended appeal.
  - c. 3. That this Honourable Court be pleased to grant the applicant leave to file his Memorandum of Appeal out of time against the Judgment of the Chief Magistrate court delivered on 30/07/2025 by the Honourable S.D Sitati In Elrc Cause No.E37 of 2024.
  - d. That the filed memorandum of appeal be deemed as properly filed.
  - e. That the costs of this application be in the intended appeal.
2. The application is made under Rules 17 and 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and Order 22 Rule 22, Order 42 Rule 6 and Order 51 of the Civil Procedure Rules, 2020.



3. The application is supported by the grounds in support thereof as set out at the foot of the application and the affidavit of Abdikadir Mohammed, the Managing Director of the Applicant.
4. In the grounds in support of the application as reiterated in the affidavit of Abdikadir Mohammed, the Applicant's Managing Director states that judgment in the case before the trial court was fixed for delivery on 14<sup>th</sup> July, 2025 but was delivered without notice to the parties on 30<sup>th</sup> July, 2025, that his advocates only became aware of the same on 5<sup>th</sup> September, 2025 and downloaded a copy from the court portal. That in the judgment the court allowed the Respondent claim against the Appellant.
5. Abdikadir Mohammed deposes further that upon receipt of notification from the advocates and being desirous of filing an appeal, the Applicant lodged a notice of appeal on 10<sup>th</sup> September, 2025 and applied for typed proceedings on the same date.
6. Abdikadir Mohammed deposes that he was served with Warrants of Attachment and Proclamation notices by Seventy Seven Auctioneers on 8<sup>th</sup> September, 2025 in which the Auctioneer indicated that the properties listed in the proclamation would be attached and sold in execution of the judgement delivered on 30<sup>th</sup> July, 2025.
7. The affiant deposes that the property listed in the proclamation being 3 fuel pumps and assorted stocks comprising oils and coolants are properties of Rubis Company as per its branding and supply agreements with the Applicant. That Rubis Company Limited is not a party to the suit, but a business partner as demonstrated in the branding and supply agreement. That no employer-employee relationship exists between the Respondent and Rubis Company Limited.
8. It is further deposed that the Respondent herein, having been dismissed from employment, has no known means of income known to the Appellant and should the appeal succeed the Respondent will not be in a position to refund the decretal sum if paid to him.
9. The application is opposed by the Respondent through the grounds of opposition as follows:
  - a. The application is incompetent, fatally defective, and bad in law as it seeks to regularize an appeal filed out of time without prior leave of the court, contrary to the mandatory provisions of section 79G of the *Civil Procedure Act* and Rule 12 and 18 of the Employment and Labour Relations Court (Procedure) Rules, 2024.
  - b. The memorandum of appeal dated 10<sup>th</sup> September 2025 is incurably defective and a nullity ab initio, the same having been filed well beyond the statutory period of 30 days from the date of judgment (30<sup>th</sup> July 2025) without leave of this Honourable Court.
  - c. The Appellant has not provided any sufficient, reasonable, or plausible explanation for the delay in lodging the appeal or bringing the present application, rendering the plea for leave an afterthought and abuse of the court process.
  - d. The Appellant's application is an attempt to circumvent clear statutory provisions and should not be entertained as it undermines the integrity of judicial process and the principle of finality of litigation.
  - e. The Appellant has not satisfied the mandatory conditions for the grant of stay of execution under Order 42 Rule 6 of the Civil Procedure Rules, having failed to:
    - a. Demonstrate that it shall suffer substantial loss if stay is not granted;
    - b. Show that the application was made without unreasonable delay; and



- c. Offer any security for the due performance of the decree.
  - f. The decretal sum of Kshs. 252,513/- plus costs and interest is a modest amount which the Appellant, being a large corporate entity, has not shown any difficulty in satisfying, hence no substantial loss will be suffered if execution proceeds.
  - g. The Appellant has approached this Honourable Court with unclean hands, seeking equitable reliefs while being in blatant breach of statutory timelines and having already allowed the execution process to lawfully commence.
  - h. The execution process commenced through lawful proclamation by Seventy Seven Auctioneers is a result of the Appellant's own indolence and cannot be stayed merely to shield the Appellant from the consequences of its own inaction.
  - i. That the applicant alleges goods attached belong to Rubis Company limited. That Rubis was indeed a party in the primary suit and thus the attachment of their property is lawful.
  - j. That Rubis is a limited liability company with its own directors. The respondent herein 'together with Mr. Abdikadir Mohammed does not have locus standi or authority to speak or swear affidavits on behalf of Rubis Company Limited.
  - k. The Respondent stands to suffer grave prejudice, hardship, and denial of the fruits of a valid judgment delivered in his favour on 30<sup>th</sup> July 2025 if the orders sought are granted.
  - l. The present application and appeal are frivolous, vexatious, misconceived, and an abuse of the court process, only intended to delay and defeat the Respondent's lawful right to enjoy the fruits of his judgment.
  - m. The Respondent prays that the Appellant's Notice of Motion dated September 2025 and the entire appeal be struck out and/or dismissed with costs for being incompetent, defective, and devoid of merit.
10. Directions were taken that the application be disposed of by way of written submissions. The parties filed and exchanged submissions, which I have considered.

### **Analysis and Determination**

- 11. I have considered the application together with the grounds in support thereof. I have further considered the Grounds of opposition filed by the Respondent and submissions of both parties. The only issue that arises for determination in my view whether the applicant is entitled to the orders sought in the.
- 12. The Applicant seeks two orders: leave to file Memorandum of Appeal out of time and stay of execution of the Judgment of the lower court dated 30<sup>th</sup> July, 2025.
- 13. Rule 12 of the Employment and Labour Relations Court (Procedure) Rules provides for time of filing appeals as follows:
  - 12. Time for filing appeals
    - (1) Where a written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified under that written law. (2) Where an appeal is from a magistrate's court or where no period of appeal is



specified in the written law referred to in sub-rule (1), the appeal shall be filed within thirty days from the date the decision is delivered.

14. Rule 80 of the Employment and Labour Relations Court (Procedure) Rules provides:

80. The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court.

15. This court therefore has unrestricted discretion to extend time for filing appeals. Such discretion is of course, to be exercised upon the applicant persuading the court that there is sufficient justification to grant the extension of time. This was the import of the decision in *Singh v Awa* (Employment and Labour Relations Appeal E041 of 2024) [2025] KEELRC 26 (KLR), where the Court in determining whether to extend time relied on the Supreme Court decision in *Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others* [2015] eKLR as decided in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014]:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”

16. The court went ahead to give underlying principles for extension of time some of which are:

“a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court; whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis; where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court; whether there will be any prejudice suffered by the respondents, if extension is granted; whether the application has been brought without undue delay.”

17. The principles for extension of time for filing appeal were settled by the Supreme Court in *Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others* [2015] eKLR where it upheld its earlier decision in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) and opined as follows: -

‘29] As regards extension of time, this Court has already laid down certain guiding principles. In the *Nick Salat* case, it was thus held:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

- i. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
- ii. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;



- iii. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
- iv. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
- v. whether there will be any prejudice suffered by the respondents, if extension is granted;
- vi. whether the application has been brought without undue delay; and
- vii. whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied].”

18. I am satisfied that the delay in filing the appeal herein has been adequately explained. It is further evident that the instant application was filed timeously, as soon as the error of filing in the wrong court was realized. As explained in the affidavit of Abdikadir Mohammed, the Applicant lodged a notice of appeal on 10<sup>th</sup> September, 2025 after it became aware of the same through its advocates on 5<sup>th</sup> September, 2025, which was within a span of 5 days.

19. Applying the principles set out by the Supreme Court in Nick Salat case on extension of time, it is in the interest of justice to extend the time for filing appeal by the Appellant. Any prejudice occasioned to the Respondent can be compensated by costs.

20. The court therefore deems the memorandum of appeal dated 10<sup>th</sup> September, 2025 as duly filed.

21. The next issue is whether the Applicant is entitled to an order of stay of execution.

22. Rule 73 of the Employment and Labour Relations Court (Procedure) Rules provides as follows:

73.

(1) The Registrar shall issue an order in execution of a decree.

(2) Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.

[Emphasis added]

23. Stay of execution pending appeal is provided for in order 42 rule 6(2) of the Civil Procedure Rules as follows:

(2) No order for stay of execution shall be made under subrule

(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 given by the applicant.

(3) Notwithstanding anything contained in subrule

(2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.



- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

24. In summary, under Order 42 rule 6(2) the Applicant must meet the following conditions: -
- i. Demonstrate that substantial loss may result to the applicant unless the order for stay is granted;
  - ii. The application has been made without unreasonable delay;
  - iii. Security as to the due performance of the court orders is given by the applicant.
25. As has already been observed above, the Appellant has filed a Memorandum of Appeal dated 10<sup>th</sup> September, 2025 hence the application is competent on this ground.
26. The second item that this court is called upon to address is whether the instant application has been brought timeously. The court has already established that the application was brought timeously upon the Appellant learning about the judgment of the trial court which was delivered without notice to the Appellant. I find that the Appellant has fulfilled this limb of the requirements for stay of execution.
27. The third limb is whether the court is satisfied on the basis of the material on the record that substantial loss would result from the execution of the judgment if the orders sought do not issue. In respect of this ground the Appellant has stated that the Respondent is a person of straw and cannot be able to refund the decretal sum should the monies be paid to her. The Respondent has not demonstrated that he will be able to pay back the decretal sum in the event the Appeal is successful.
28. In the circumstances, I am persuaded that the Appellant has indeed demonstrated that it will suffer substantial loss if the order for stay of execution is not granted.
29. As to security, the Appellant has stated that it is willing to furnish such reasonable security as the court may order in the interest of both parties and justice.
30. For these reasons I find that the Appellant is entitled to an order of stay of execution of the trial court's judgment and decree.
31. In the end, I find the application herein merited and make orders as follows:
- i. The Applicant is hereby granted leave to file appeal out of time against the judgment and decree of the trial court in Eldoret CMELRC No. E037 of 2024 delivered on 30<sup>th</sup> July, 2025
  - ii. The Memorandum of Appeal on Appeal on record is deemed to be duly and properly filed.
  - iii. The Appellant shall deposit the entire decretal sum in a joint interest earning account in the joint names of counsel for the parties within 30 days.
  - iv. The costs of this application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2026.**



**M. ONYANGO**  
**JUDGE**

