



Hayson v DHL Supply Chain Kenya Lt & another (Cause E417 of 2020) [2026] KEELRC 337 (KLR) (6 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 337 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E417 OF 2020
NJ ABUODHA, J
FEBRUARY 6, 2026**

BETWEEN

JEREMY HAYSON CLAIMANT

AND

DHL SUPPLY CHAIN KENYA LT 1ST RESPONDENT

DEUTCHE POST DHL GROUP 2ND RESPONDENT

RULING

1. Before me are two applications dated 17th April, 2025 and another dated 29th April, 2025 the essence of which seek orders for stay of execution of the judgment of this court pending appeal to the Court of Appeal. The Judgement of the Court sought to be appealed was delivered on 5th September, 2024 hence the present application has been brought quite late. On 15th May, 2025 when the parties appeared before me, there was indication that the parties were pursuing amicable settlement on the issue of stay. I therefore slated the matter for mention on 30th June, 2025 to allow the parties settle the terms of the stay of execution.
2. There seems to have been no agreement on the terms of stay of execution hence the necessity for me to determine the same. Judicial precedents are awash with decisions outlining the considerations that the trial court takes into account when faced with an application for stay of its decision pending appeal. These considerations are slightly different from those taken into account by the appellate court.
3. The main consideration under Order 42 rule 6 is whether the applicant has furnished or ready and willing to provide security for any order that the Court may ultimately make. The issue whether the applicant has an arguable appeal with probability of success and whether the appeal if successful would be rendered nugatory are matters to be considered by the Court of Appeal under Rule 5(2)(b) of the Rules of that Court.



4. Counsel for the applicant has very ably drawn the Court’s attention to some of these decisions and I commend him for the industry. The applicant has further stated its preparedness to furnish a bank guarantee as security for the decretal sum.
5. Counsel for the respondent on the other hand has lamented that the judgment herein was delivered on 5th September, 2024 and that his client has since then not enjoyed the fruits of the judgment. Counsel has further submitted that his client is not a man of straw and would be capable of refunding the decretal sum if the appeal became successful. However apart from mere allegation that the claimant is not a man of straws, the respondent has not substantially demonstrated his ability to refund the decretal sum if the appeal becomes successful. It was held in the case of John Nduba vs. African Medical and Research Foundation (Amref Health Africa) 2021 eKLR that:

It is not enough for the Respondent to state that he is in a position to refund the amount because he is a reputable doctor with over 32 years of experience. He only stated that he can refund the decretal sum but did not prove such ability to refund the US\$ 149,052. The emerging jurisprudence from this Court and the Court of Appeal is that it would be a daunting task to expect the Applicant to prove whether or not the Respondent is a man of means since such information and evidence is only within the Respondent’s knowledge.

Further in the case of National Industrial Credit Bank Ltd v Aquinas Francis Wasike & another [2006] eKLR it was held that:

“This Court has said before and it would bear repeating that while the legal duty is on an applicant to prove the allegation that an appeal would be rendered nugatory because a respondent would be unable to pay back the decretal sum, it is unreasonable to expect such an applicant to know in detail the resources owned by a respondent or the lack of them. Once an applicant expresses a reasonable fear that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge — see for example section 112 of the *Evidence Act*, Chapter 80 Laws of Kenya.”

6. In the case of Khalsa Schools & 2 Others vs. Samuel Odhiambo Otieno [2021]KEELRC 11989(KLR) relied on by the applicant, the Court stated that;

“...as was stated by Parker LJ in Rosengren vs. Safe Deposit Centre Ltd (1984) ALL ER 198 which has been quoted widely with approval in many cases in Kenya, security for the due performance of a decree ought to be given in a way that is least disadvantageous to the party giving security and may be in many forms including a bank guarantee. What is important is that it must be adequate and binding. It is my view that a bank guarantee from a reputable bank is adequate security for the performance of the decree herein”

7. In conclusion the Court finds and holds that the application is merited and hereby grants stay of execution on condition that the applicants shall furnish a suitable bank guarantee for the full decretal sum within 30 days of this order, in default thereof the respondent shall be at liberty to execute the decree of the Court.

8. It is so ordered.

DATED AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2026

DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2026



ABUODHA NELSON JORUM
PRESIDING JUDGE-APPEALS DIVISION

