

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. E872 OF 2021

DAVID KARIUKI MAINA.....
CLAIMANT

VERSUS

TAKAFUL INSURANCE OF AFRICA LIMITED.....
.....RESPONDENT

RULING

The Respondent/Applicant filed a notice of motion application dated 2nd July 2025 seeking an order in the following terms: -

1. Spent
2. Spent
3. That upon hearing of this application, the Honourable Court be pleased to grant an order of stay of execution of the judgment of 23rd January 2025 and the decree arising therefrom pending the hearing and determination of the appeal filed by the Respondent (Applicant).
4. That the Honourable Court do make such further or other orders as it may deem just and equitable in the circumstances.
5. That cost of the application be borne by the Claimant (Respondent).

The application is premised on grounds 1 to 7 set out on the face of the notice of motion and buttressed in the supporting affidavit of the Applicant the nub of which is that the court entered judgment in favour of the

Respondent on 23/1/2025 in the sum of Kshs. 1,080,000.00 plus costs and interest.

That the Applicant has filed an appeal to the Court of Appeal and has requested for typed proceedings. That the Respondent had his bill taxed on 25/3/2025 and may therefore execute the decretal sum at any time.

That substantial loss will be occasioned by the Applicant unless the stay of execution pending the hearing and determination of appeal is granted since the Claimant is not in a position to refund the decretal sum because he has no known assets and is also no longer in Kenya as he works in the United States of America as stated by him during his testimony in court. That the appeal would be rendered nugatory if the stay is not granted therefore.

That the Applicant is willing to deposit the judgment amount in court as security pending the hearing and determination of the appeal. The Applicant is also ready to issue other security as the court may deem fit.

The application is opposed vide a replying affidavit of the Respondent sworn to on 29/7/2025 in which he says that judgment was delivered on 23rd January 2025 for a sum of Kshs. 1,080,000.00 plus costs and interest. The court issued 30 days stay of execution of the judgment which lapsed on 22/2/2025.

That on 24/1/2025, Advocates for the Respondent issued a demand notice to the Applicant for the payment of the decretal sum. That the Applicant did not respond to the notice.

That it was not until 5th February 2025, when the Applicant served the Respondent with a notice of appeal. That no formal appeal had been filed and so the Respondent filed a party and party bill of costs on 12/3/2025 and same was taxed on 23/6/2025 with participation of the Applicant. The bill was allowed at Kshs. 208,808.00. The Applicant then requested for 30 days stay of execution from the Deputy Registrar which was granted and was to lapse on 24/7/2025. The Applicant was issued with a total payable amount of Kshs. 1,354,102.00.

This application was filed on 2/7/2025 whereas judgment was delivered on 23rd January 2025. There has therefore been inordinate delay in filing this application.

That the judgment was well reasoned and the intended appeal has no probability of success. That the Applicant has not met the threshold for grant of stay of execution. That the Respondent is entitled to the fruits of his judgment. That it is in the interest of justice that this application is not granted.

The parties filed submissions which the court has carefully considered together with the depositions by the parties. Grant of stay of execution pending an appeal is governed by Order 22 Rule 6(1) and (2) of the Civil Procedure Rules 2010.

In particular Order 6(2) provides

“No order for stay of execution shall be made under subrule (1) unless: -

- (a) the court is satisfied that the 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 service decree or order as may ultimately be binding on him has been given by the Applicant.”***

In the case of **Butt versus Rent Restriction Tribunal (1979)** the Court of Appeal stated that the power of the court to grant or refuse stay of execution pending appeal is discretionary and in exercising that power the court is mandated to consider the special circumstances of the case and its unique requirements.

In the present case, the application for stay was filed on 2/7/2025 while the judgment was delivered on 23/1/2025. The application was filed more than 4 months later. The Applicant enjoyed 30 days of stay of execution granted by the court upon delivery of judgment and also enjoyed a further 30 days stay from the Deputy Registrar upon delivery of the taxation ruling on 25th June, 2025.

The Applicant had timeously filed a notice of appeal dated 5th February 2025 under Rule 77 of the Court of Appeal Rules 2022 and the court is satisfied that on the facts considered, the application is not visited by inordinate delay. Given that the Respondent is resident in the United States of America, outside the jurisdiction of this court, in the event the decretal

sum is paid and the appeal is eventually successful, the Respondent may be unable to recover the decretal sum and thus would incur substantial loss and the appeal would be rendered nugatory.

Therefore, the court finds that the justice of the case is in favour of grant of stay of execution pending the hearing and determination of the intended appeal.


Accordingly, the court is satisfied that the Applicant has met the requirements for grant of stay of execution pending appeal and the court grants the same as follows: -

(a) Stay of execution of the judgment of 23rd January 2025 is granted on condition the Applicant deposits the decretal sum certified by the Deputy Registrar in a joint interest earning account in the names of the Advocates for the parties within 30 days of this Ruling.

In the event the Applicant defaults in depositing the decretal sum within the 30 days, the stay order will lapse and the Respondent will be at liberty to execute.

(b) Each party to bear their costs of this application.

Dated at Nairobi this 9th day of February 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 16th day of February 2026

J. W. KELI

JUDGE

In the presence of:

Thiongo for Claimant

Burugu for Respondent

Mr. Kemboi – Court Assistant

ORIGINAL