

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

MISC. APPLICATION NO. E003 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

LENNOX JAMBO MWASAHA (Suing as The Legal Representative of the Estate of the Late Silas Chilango Jambo(Deceased))1ST APPLICANT

ELVINER KAJIMBI JAMBO (Suing as The Legal Representative of the Estate of the Late Silas Chilango Jambo (Deceased)2ND APPLICANT

VERSUS

SUGUNA FOODS KENYA LIMITEDRESPONDENT

RULING

1. The application before me for determination is the Respondent's Notice of Motion dated 29th May, 2025. The Respondent/Applicant seeks the following Orders:-

(a) *Spent.*

(b) *Spent.*

- (c) That the warrants of attachment issued to **Bealine Kenya Auctioneers** and Proclamation dated 28th May, 2025 be lifted and set aside.
- (d) That the Court be pleased to order a stay of execution of the Ruling delivered on 9th May, 2025 pending hearing and determination of the Respondent's appeal.
- (e) That the Court be pleased to grant any further relief and/or order as it may deem fit and just to grant in the circumstances.
- (f) That costs of the application be provided for.

2. The application sets out on its face the grounds on which it is brought, and is based on the supporting affidavit of **Victor Muhya** sworn on 29th May, 2025. It is deponed in the said affidavit, *inter-alia*:-

- (a) that the Director's award of **Kshs.8,160,000/=** and dated 23rd March, 2023 was adopted by the Court, and that Judgment was accordingly entered for the Applicant/Respondents for the said sum of **Kshs.8,160,000/=**.

*(b) that dissatisfied with the said Ruling, the Respondent lodged a notice of appeal **dated 23rd May, 2025**, and that unless a stay of execution is ordered, execution will proceed, and the appeal will be rendered nugatory.*

3. The Applicant/Respondent is not shown to have opposed the application, though said to have been served.
4. Although the Respondent/Applicant states that it filed a Notice of Appeal, it is not shown to have pursued typing and certification of this Court's proceedings for purposes of the intended appeal. Further, the Respondent/Applicant did not allege to have filed a record of appeal in the Court of Appeal in accordance with the said Court's Rules, **over eight (8) months from the date of this Court's impugned Judgment/decreed.**
5. Section 13 of the Employment and Labour Relations Court Act provides as follows:-

“A Judgment, award, order or decree of the Court shall be enforceable in accordance with the rules made under the Civil Procedure Act.”

6. **Order 42 Rule 6 (1) of the Civil Procedure Rules** provides as follows:-

“(1) No appeal or second appeal shall operate as a stay of execution of proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply

to the appellate court to have such order set aside.”

7. It ought to be appreciated that execution of a Court’s decree **is not** an unlawful occurrence and/or process. It is a lawful process initiated by a successful litigant towards realization and actualization of the successful litigant’s rights as determined by a court of competent jurisdiction. That is why Order 42 Rule (6)(2) of the Civil Procedure Rules provides as follows:-

“(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.”

8. The Respondent/Applicant in this matter has **not** demonstrated that it stands to **suffer any form of substantial loss unless the stay order sought is granted**, and has **not** made any undertaking on furnishing of security by it for due performance of the decree herein, **should the intended appeal fail.**
9. As stated by the Court of Appeal in the **Butt - vs - Rent Restriction Tribunal [1979] eKLR**, the Court has to exercise its best discretion in a way so as to prevent the appeal, if successful, from being nugatory.
10. Having said that, and having considered the Respondent/Applicant's written submissions, the Notice of Motion dated 29th May, 2025 is hereby allowed in the following terms:-
- (a) There will be a stay of execution of this Court's decree herein pending hearing and determination of the intended appeal, but on condition that the Respondent/Applicant deposits the entire decreed sum of Kshs.8,160,000/= in this Court and pays the Auctioneer's lawful charges, all within fourteen (14) days of this Ruling, failing**

which the stay ordered herein shall automatically lapse; and the execution process shall continue.

(b) Each party shall bear its own costs of the application.

11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
13TH DAY OF FEBRUARY 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:

No appearance for the Applicant/Respondent

Miss Kioko for the Respondent/Applicant

ORIGINAL