

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

APPEAL NO. E080 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

TABAKA MISSION HOSPITAL.....
APPELLANT

VERSUS

PATRICIA CHEPCHIRCHIR
MUTAI.....RESPONDENT

RULING

Before the court for determination is the Appellant's Notice of Motion dated 18th December 2025 filed under Certificate of Urgency seeking Orders that:-

- 1. Spent.*
- 2. The Orders issued by the court on 18th December 2025 be reviewed.*
- 3. The mention date in the matter currently set for 26th February 2026 be brought forward to a date before the 4th January 2026 to preserve the stay of execution.*
- 4. Costs of this application be in the cause.*

The Notice of Motion was expressed under Section 3A of the Civil Procedure Act, Order 45 Rule I of the Civil

Procedure Rules and Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (Repealed) and based on the grounds outlined on its face and the Supporting Affidavit of Brigitte Adhiambo Owuor Advocate sworn on 18th December 2025, who deposed that on 18th December 2025, she was unable to attend court owing to a medical emergency involving a child after a fall on 16th December 2025 and required further check up on 18th December 2025 and could not attend court.

The affiant further deposed that she was unaware of the court's directions on the application dated 15th December 2025 filed on 16th December 2025 and the non-appearance in court was unintentional and filed the instant application promptly for a review of the Orders made on 18th December 2025.

To buttress the applicant the affiant attached a copy of a letter by Dr. Justus Obotha, Registrar JOOTRH-Kisumu dated 18th December 2025 confirming that a 5 year old child had been attended to on 18th December 2025 with a further appointment on 23rd December 2025.

Respondents case

By 16th February 2026, the respondent had not responded to the instant application and it is therefore unopposed.

Appellant's submissions

As to whether the instant Application met the threshold for the grant of a stay of execution, counsel for the applicant relied on Order 42 Rule 6 of the Civil Procedure Rules and the decisions in **Vishram Ravji Halal V Thounton & Jurpin** [1990] KLR 365 to urge that based on the conditions imposed by the learned trial magistrate, the appellant had a sustainable case for grant of the orders sought.

As regards the requirements of Order 42 Rule 6 of the Civil Procedure Rules, counsel relied on the sentiments of the court in **James Wangalwa & another V Agnes Naliaka Cheseto** [2012] eKLR and **Kenya Shell Ltd V Kibiru** [1986] KLR 40 on substantial loss, **Butt V Rent Restriction Tribunal** [1979] on the court's discretion to grant a stay of execution and **Consolidated Marine V Nampijja & another** Civil Appeal No.93 of 1999 on the essence of stay of execution.

Finally, on security, reliance was placed on the sentiments of the court in **Mwaura Karuga T/A Limit Enterprises V Kenya Bus Services Ltd & 4 others** [2015] eKLR, **Nduhiu Gitahi V Warugongo** [1988] KLR 621, **Arun Sharma V Ashana Raikundalia T/A Rairundalia & Co. Advocates & 2 others** [2014] eKLR, **Gantranco Manerithi & another V Africa Merchant & another V Africa Merchant Assurance Co. Ltd** [2019] eKLR, **Focin Motor Cycle Co. Ltd V Ann Wambui Wangui & another** [2018] eKLR and **Dominic Wamugi Nderi V Daniel Okeri Matunda** [2022] eKLR among others to urge that the applicant's offer to provide bank guarantee as security was sufficient for purposes of grant of the Order of stay of execution pending appeal.

Analysis

On 20th November 2025, the applicant's appeal was scheduled for mention before the court but the appellant was absent. A further mention was slated for 16th December 2025 and service of the mention notice was directed by the court.

On 16th December 2025, the appellant was absent for the 2nd time but filed an application for stay of execution and

a hearing was scheduled on 18th December 2025 but the appellant did not attend.

The appellant's absence led to the mention slated for 26th February 2026, which order the applicant seeks reviewed and the mention brought to date before 4th January 2026.

The power of a court to review its judgments, Orders, awards or decrees is statutory as evidenced by the provisions of the Civil Procedure Act and the Employment and Labour Relations Court Act.

Section 16 of the Employment and Labour Relations Court Act provides:

The court shall have power to review its judgments, awards, Orders or decrees in accordance with the Rules.

Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024 prescribe the circumstances in which a court may review its Orders or decrees at the instance of the aggrieved party.

Under Rule 74:-

(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but

from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

(a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

(b) on account of some mistake or error apparent on the face of the record;

(c) if the judgment or ruling requires clarification; or

(d) for any other sufficient reason.

(2) ...

(3) ...

(4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.

As to whether this application was made within a reasonable time, the court is satisfied that it was bearing in mind that it was filed on the date the Order sought to

be reviewed was made. The application was instituted promptly.

It is trite law that what constitutes to reasonable time is a question of fact dependent on the circumstances of each case as held in **Jaber Mohsen Ali V Priscillah Butt & another** [2014] eKLR.

From the affiant's deposition as confirmed by the Doctor's letter of even date and the promptness with which the instant application was filed, which is undoubtedly creditable, the court is satisfied that counsels non-attendance of court on the morning of 18th December 2025 was unintentional and the court Order dated 18th December 2025 that the instant matter be mentioned on 26th February 2026 is hereby set aside.

However, the applicant had sought a date prior to 4th January 2025 which has been overtaken by events.

Moreover, the matter has a mention slated for 16th February 2026 as agreed by the parties on 28th January 2026.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 19TH DAY OF FEBRUARY 2026.**

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate

just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI
JUDGE

ORIGINAL