

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION NUMBER E064 OF 2025**

BETWEEN

PYRETHRUM PROCESSING COMPANY APPLICANT

VERSUS

DAVID KIBET RESPONDENT

RULING

1. The Applicant seeks, through the application dated 13th November 2025 [the year is indicated as 2024 in the Notice of Motion], orders that: the Applicant is allowed to file and serve its memorandum and notice of appeal out of time; the Applicant is allowed to adduce additional evidence; the Respondent is restrained from executing ruling delivered on 21st October 2025; and pending hearing of the intended appeal, an order is issued staying execution of the ruling delivered on 21st October 2025.
2. The application is supported by an affidavit sworn by Ephraim Wachira, acting Chief Executive Officer of the Respondent, on 13th November 2025.
3. He explains that the Applicant filed an application dated 19th December 2024, seeking to reopen proceedings at the Trial Court, and another application dated 3rd April 2025, seeking to stay execution of the Judgment of the Trial Court delivered on 17th February 2025.

4. In both applications, the Applicant submitted that there was a winding up case at the High Court Nairobi, Cause No. 24 of 2012, which involved Pyrethrum Board of Kenya Staff Superannuation Scheme.
5. The Trial Court declined both applications in its ruling dated 21st October 2025, which is subject matter of the intended appeal before this Court, and subject matter of today's ruling.
6. The Respondent is opposed to the application through the replying affidavit of his Advocate dated 9th December 2025.
7. Although titled 'replying affidavit,' the document is not an affidavit. It is simply dated at Nakuru, and signed by Ochweri Franklin Bossire, Advocate for the Respondent. It is not commissioned. There is no name, signature and stamp of any commissioner for oaths.
8. The document titled 'replying affidavit,' dated 9th December 2025, signed by Ochweri Franklin Bossire, is expunged from the record.
9. The Applicant confirmed filing and service of its submissions at the last appearance before the Court on 28th January 2026. The Respondent did not file any submissions, relying entirely on the 'replying affidavit,' which has been expunged from the record.

The Court Finds: -

10. The record shows that the Applicant entered appearance at the Trial Court in the year 2022, but failed to file a response or participate in the trial.
11. There was no reasonable ground for the Applicant's failure to file response, or participate in the trial.
12. There was no appeal against the Judgment of the Trial Court filed in this Court.
13. The Court has not been availed cogent reasons, why the Trial Court should have reopened its proceedings to accommodate a lethargic litigant, or why the Trial Court should have granted an order of injunction against, or stay of execution of, its Judgment.
14. The reference to liquidation proceedings pending at the High Court in Nairobi, was not convincing ground to grant an order of stay of execution or injunction.
15. Liquidation proceedings did not involve the Applicant, but a Scheme, which was never a party at the Trial Court, or in this application.
16. The Trial Court was not provided with gazette notice, court order, or official communication, confirming appointment of liquidator.

17. The Court cannot allow a party who deliberately failed to respond to a Claim, which was filed way back in 2022, to later rush to Court seeking to reopen proceedings and to adduce "further evidence."
18. There is similarly no reason why the Respondent did not file its notice and memorandum of appeal in time.
19. The application appears aimed at enabling the Applicant, to redress its own shortcomings at the Trial Court.

IT IS ORDERED: -

- a. The Application filed by the Applicant, dated 13th November 2025 [erroneously indicated as 2024 in the Notice of Motion], is declined.*
- b. No order on the costs.*

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 27th day of February 2026.

James Rika

Judge

