



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
INSOLVENCY CAUSE NO. E070 OF 2024

BETWEEN
RETIREMENT BENEFITS AUTHORITY PETITIONER

VERSUS

**POSTAL CORPORATION OF KENYA STAFF
RETIREMENT BENEFIT SCHEME 1ST
RESPONDENT**
**POSTAL CORPORATION OF KENYA 2ND
RESPONDENT**

RULING

Background and Introduction

1. By a Ruling dated 5th December 2024 this Court issued the following Orders:

- i. Pending the hearing and determination of the insolvency petition filed, MR. LONGET KIPRONO TERER is hereby appointed as interim liquidator of the 1st respondent, Postal Corporation of Kenya Staff*

Retirement Benefits Scheme, to trace, take possession of, collect, recover, protect and preserve the assets of the scheme;

ii. The 2nd respondent, Postal Corporation of Kenya is directed to stop deducting and remitting contributions from the members of the scheme. Each party shall bear their own costs.

2. Subsequently, on 17th December 2024 the Court issued further Orders as follows:

- i. I allow the application dated 10/12/2024 [for stay of execution of the Ruling of 5th December 2024] on the following condition:*
- ii. The applicant shall deposit a sum of Kshs. 200,000,000/= (Two Hundred Million Only) into a joint, interest-earning account to be opened in the names of counsel for the applicant and counsel for the 1st respondent. Such deposit shall be made within 45 days of the date of this order.*
- iii. Should there be default of (i) above, the stay orders issued herein shall lapse automatically and the orders issued on*

5/12/2024 shall take effect immediately without any further reference to this court.

iv. The matter will proceed as earlier directed for mention on 27/2/2025. The costs shall await the outcome of the petition.

- 3.** It is not in dispute that the Respondents thereafter filed Civil **Appeal No. E055 of 2025**. They sought and obtained a conditional stay of execution of the ruling of 17th December 2024. Having complied with the security condition imposed by the Court of Appeal, the Respondents secured a stay of execution of that ruling.
- 4.** What is presently before the Court is an application dated 15th July 2025, seeking a stay of further proceedings in this matter pending the hearing and determination of the intended appeal. The application is opposed through a Replying Affidavit sworn on 27th October 2025 by **John Muli**, Assistant Director, Supervision Directorate of the Petitioner. I have also considered the written submissions filed by both parties.

Analysis and Determination

5. The Petitioner raises a preliminary point on the grounds that the instant application is barred by the doctrine of *res judicata*, because this Court had already pronounced itself on the issue in the Ruling of 17th December 2024. It is for this reason that it was important to lay out the brief history of the applications before this Court.
6. I have studied the Ruling of 17th December 2024. The same was in determination an application by which the now appellants sought *a stay of execution of the Ruling delivered on 5th December 2024, and all consequential orders arising therefrom, pending hearing and determination of the Applicant's Appeal*. That being the case, it is clear that this Court did not consider or determine any prayer for stay of proceedings. A stay of proceedings is a distinct relief from a stay of execution, and the two cannot be conflated.
7. I also confirm the submission made by the 1st Respondent that the Court of Appeal, in its Ruling delivered on 5th June 2025, declined to grant a stay of proceedings solely on the basis that the prayer was considered spent within the specific context of

that interlocutory application. It is important to note that the Court of Appeal did not determine the prayer on its merits.

8. Turning now to the substance of the prayer for stay of proceedings before this Court, I am not persuaded that the application has been brought inordinately late. The intervening litigation between the impugned Ruling of 5th December 2024 and the present application dated 15th July 2025 sufficiently explains the period in between.
9. That said, the jurisdiction of this Court to grant a stay of proceedings pending appeal is anchored in ***Section 3A of the Civil Procedure Act*** and ***Order 42 Rule 6(1) of the Civil Procedure Rules***. Such jurisdiction is discretionary and not automatic. It must be exercised upon an applicant demonstrating that the appeal is arguable and that, absent a stay, the appeal would be rendered nugatory. (***See Stanley Kangethe Kinyanjui V Tony Ketter & 5 Others, [2013] KECA 378 KLR***).
10. In the present case, I agree with the applicant that the arguability of the appeal has already been

affirmed by the Court of Appeal at paragraph 13 of its Ruling delivered on 5th June 2025. In the circumstances, and considering the potential finality of the outcome in the petition before this Court, it would not serve the efficient use of judicial resources to allow these proceedings to continue. There exists a real risk of conflicting decisions, and in deference to the doctrine of comity of courts and respect for judicial hierarchy, it is appropriate that these proceedings be stayed pending the outcome of the appeal.

Disposition

11. Accordingly, the application dated 15th July 2025 succeeds. A stay of the instant proceedings be and is hereby granted pending the hearing and determination of the appeal. Each party shall bear their own costs of the application.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 20TH DAY OF FEBRUARY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Munene for the 1st respondent/applicant
Mr Chebon HB for Mr Ochieng for the petitioner
Court Assistant: Lillian