

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

APPEAL NO. E066 OF 2025

INSIGHT MANAGEMENT CONSULTANTS LIMITED APPELLANT

VERSUS

PHILEMON SIMIYU SILUNGI RESPONDENT

RULING

The appellant filed an application dated 5 December 2025 under the provisions of section 12 of the Employment and Labour Relations Court Act and Order 42 rule 6 of the Civil Procedure Rules seeking Orders:

- a) *Spent.*
- b) *Spent.*
- c) *Pending the lodging, hearing and determination of the intended appeal, there is a stay of execution of the judgment and decree of the court delivered on 25 September 2025 in the instant appeal.*

David Malago, the managing director of the appellant, filed his Supporting Affidavit. He avers that the court delivered judgment herein on 25 September 2025, affirming the trial court's findings that there was a continuous employment relationship between the parties and that there was unfair redundancy. The court varied the trial court's award of Ksh 196,214.64 by substituting it with an award of Ksh. 72,999.30 to the respondent as damages and costs.

The appellant is aggrieved by the judgment and seeks to file an appeal to the Court of Appeal. There are grounds of appeal which challenge the findings of this court on the application of the law and that the respondent was protected under section 37 of the Employment Act.

Malago avers in his affidavit that a Notice of Appeal has since been filed. The grounds of appeal demonstrate that there exists an arguable appeal with high chances of success. If the court does not intervene and grant an order of stay of execution, the respondent will proceed with execution proceedings to the detriment of the appellant and thus render the appeal nugatory. The appellant will suffer irreparable loss and damage as a result of execution.

Malago avers that unless the intended appeal is secured by an order of stay herein, the purpose will be lost. There will be no injustice or prejudice visited against the respondent if the subject of the suit is preserved.

In reply, the respondent filed his Replying Affidavit and argues that the judgment was delivered on 25 September 2025 in the presence of the appellant. No orders of stay were granted. Despite being aware of the judgment, the Notice of Appeal were only filed after service of Notice of Judgment and draft Decree on 1 October 2025.

The appellant has moved the court for a stay of execution only after an unreasonable delay. There are no justifiable reasons given for the delay.

The grounds of appeal in the draft have already been litigated before this court. The appellant seeks to re-litigate the same facts. This renders the application frivolous and meant to impede the respondent's right to enjoy the fruits of the judgment. The judgment sum of Ksh. 72,999.30 is not colossal to render it unrecoverable. Thus, the appellant has not met the threshold for the grant of an order of stay of execution by failing to demonstrate the loss to be suffered if the judgment sum is paid.

The appellant remained absent during the hearing.

The respondent filed written submissions.

The respondent submitted that the orders should be made by the application for stay of execution are not justified. The threshold under Order 42, Rule 6, has not been met. There was a delay in filing the instant application upon the judgment on 25 September 2025. The delay until 5 December 2025 has not been explained. It is inordinate and without justification as held in **James Wangalwa & another v Agnes Naliaka Cheseto [2012] eklr.**

There will be no loss suffered if the orders sought are not issued. The foundation of an application for stay of execution is for the applicant to demonstrate the substantial loss to be suffered if the stay is not allowed. In this case, the judgment sum is Ksh. 72,999.30 is not colossal, and upon the appellant exercising its right of appeal, this can be recovered. However, the order of stay of execution is not deserved in this case.

The draft appeal does not raise any new grounds separate from this appeal. The application should be dismissed with costs to the respondent.

Determination

The single issue for determination is whether an order of stay pending the hearing and determination of the intended appeal should be issued.

Upon the judgment herein, the parties have the right of appeal. Also, upon the judgment, the parties have a legitimate expectation of its enforcement.

The appellant seeks a stay of execution pending the hearing of its intended appeal. The essence of such an order is the court direction, which should be applied judicially in view of the governing principles.

The principles governing a stay of execution are set out in Order 42, Rule 6. This requires that;

No order for stay of execution shall be made under sub-rule (1) unless—

(a) The court is satisfied that a 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 given by the applicant.

In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, that:

No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to , the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

The overriding principle to be satisfied is that of the substantial loss to be suffered unless the order of stay is granted. The question of security offered for the due performance of the judgment is equally imperative.

The appellant has not addressed these two aspects at all. The loss to be suffered if the court's judgment is executed is not gone into. There is no offer of security in this regard.

The respondent holds a valid court judgment. The discretion to stay the judgment pending the hearing of the intended appeal is not demonstrated in favour of the appellant.

Accordingly, the application dated 5 December 2025 is without merit and is hereby dismissed with costs to the respondent.

Delivered in open court at Mombasa, this 12th day of March 2026.

M. MBARŨ
JUDGE

In the presence of:

Court Assistant: Omar

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