

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
APPEAL NUMBER 29 OF 2018**

BETWEEN

MARIDADI FLOWERS LIMITEDAPPELLANT

VERSUS

DIRECTOR OF OCCUPATIONAL SAFTY &
HEALTH SERVICERESPONDENT

AND

EZEKIEL WALWANDA KHISAINTERESTED
PARTY

RULING

1. The Respondent made an award in favour of the Interested Party for work injury, on 25th May 2018.
2. The award was unsuccessfully challenged through objection made to the Director, by the Appellant.
3. The Appellant filed this Appeal against the award, which was dismissed by the Court, on 5th October 2021.
4. The Appellant states that it has appealed against the decision of this Court, at the Court of Appeal, and the Appeal is yet to be heard and determined.

5. Through the application dated 10th March 2026, filed under certificate of urgency, the Appellant seeks orders staying execution of the award made by the Respondent, in WIBA /NSA/7360.
6. The application comes fast on the heels of a Judgment of this Court, in Appeal No. E007 of 2024, which was between the Appellant herein and the Interested Party.
7. The Interested Party had moved to the Principal Magistrate's Court for execution of the award. The award was adopted as Judgment of the Principal Magistrate's Court and execution proceedings initiated.
8. This Court declined the Appeal on 27th February 2026, holding that it would not interfere with an award of the Respondent, made way back in 2018.
9. It was observed that the Principal Magistrate adopted the award, prior to the clarification made by the Court of Appeal in **Charles v. Cheto, KECA 784 [KLR], [Judgment 9th May 2025]**. At the time the Principal Magistrate acted on the award, jurisdiction on enforcement had not been clarified.
10. This Court [E&LRC] held that an award lawfully made in 2018, subjected to objection and appeal proceedings, would not be expected to remain un-enforced, about 8 years after it was made. Such delay does not fit with the objectives of the Work Injury Benefits Act.

11. The Court considers itself to be *functus officio*, having declined the appeal against the Respondent's decision on objection made against the award.
12. Section 52 of the Work Injury Benefits Act, limits the Court to hearing appeals, while the enforcement jurisdiction, has been extended to the Court, by the Court of Appeal in **Charles v. Cheto**.
13. The Court does not think it can stay execution of an award which was made in 2018, and which has already been adopted by the Principal Magistrate.
14. Although the Appellant states that it filed an appeal against the decision of the Court dated 5th October 2021, there are no details given, of the appeal.
15. There is only a notice of appeal, dated 18th October 2021.
16. There is no plausible explanation, why an order of stay of execution, is sought 5 years, after the Judgment was made in 2021.
17. The application offends all the principles applicable, in granting orders of stay of execution pending appeal.
18. The Court has reached the end of its mandate.

19. The Appellant may well file an application for stay of execution at the Court of Appeal, if there is a pending appeal, which would be rendered nugatory, by execution of the award made in 2018.
20. This Court is satisfied that the fresh application, to stay execution of the award made in 2018, is unsustainable.

IT IS ORDERED: -

- a. *The application filed by the Appellant, dated 10th March 2026 is unsustainable and is declined.*
- b. *This appeal having been heard and determined in 2021, the file shall be marked as closed.*
- c. *No order on the costs.*
- d. *A copy of this ruling to be availed to all the Parties.*

Dated, signed and delivered electronically at Nakuru, this 10th day of March 2026.

James Rika
Judge


