



REPUBLIC OF KENYA



**KENYA LAW**  
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**Peoplelink Consultants Limited v Ndiwa (Employment and Labour Relations Appeal E044 of 2025) [2026] KEELRC 713 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 713 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E044 OF 2025**

**JW KELI, J  
MARCH 13, 2026**

**BETWEEN**  
**PEOPLELINK CONSULTANTS LIMITED ..... APPLICANT**  
**AND**  
**FESTUS KORIR NDIWA ..... RESPONDENT**

**RULING**

1. The applicant filed an application by way of Notice of Motion dated 3<sup>rd</sup> September 2025 brought under Rules 21, 44, 45, 68 and 73 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and Order 42 Rule 6 of the Civil Procedure Rules for ORDERS,
  - a. Spent
  - b. THAT pending the hearing and determination of this application interpartes, there be an order for stay of execution of the decree issued against the Appellant in Mavoko MCELRC Misc. No. 097 of 2024, Festus Korir Ndiwa -vs.- Peoplelink Consultants Limited & Another.
  - c. THAT there be a stay of execution of the decree issued against the Appellant in Mavoko MCELRC Misc. No. 097 of 2024, Festus Korir Ndiwa -vs.- Peoplelink Consultants Limited & Another pending the hearing and determination of the appeal herein.
  - d. THAT the costs of this application be provided for.
2. Grounds of the application
  - I. THAT the appeal herein challenges the decision delivered on 12/08/2025 in Mavoko MCELRC Misc. No. 097 of 2024, Festus Korir Ndiwa -vs.- Peoplelink Consultants Limited & Another in terms of which the Appellant's application for setting aside a decree issued against on 13/12/2025 pursuant to ex-parte proceedings commenced on behalf of the Respondent was dismissed.



II. THAT the said decree results from an ex-parte application dated 09/12/2024 which sought to enforce an award dated 16/10/2024 made by the Director of Occupational Safety and Health Services within the framework of the provisions of the Work Injury Benefits Act, Cap. 236 Laws of Kenya.

III. THAT the said ex-parte application was allowed on 13/12/2024 leading to the extraction of a decree in favour of the Respondent with the result that the Honourable Subordinate Court made the enforcement order prematurely when account is taken of the fact that the time limited for purposes of challenging that award as provided under Section 51 of the Work Injury Benefits Act, Cap. 236 Laws of Kenya had not lapsed.

IV. THAT as it turned out, while unaware of the said ex-parte enforcement proceedings and having exercised its right to object to the award under Section 51 of Work Injury Benefits Act, Cap. 236 Laws of Kenya, the Appellant procured the setting aside of the said award by the Director of Occupational Safety and Health Services in terms of his determination dated 18/12/2024 in relation to the Appellant's objection.

V. THAT having declined to allow the setting aside of the decree obtained against the Appellant in such circumstances, the Honourable Subordinate Court has issued in favour of the Respondents warrants of attachment and sale in execution on the strength of which the Appellant has been proclaimed) THAT unless an order for stay of execution of the decree in the matter giving rise to the appeal is made and the sum due thereunder paid over to the Respondent while the appeal is pending disposal before this Honourable Court, the Appellant would suffer substantial loss as such sums once paid would have been put beyond its reach in the event that the appeal eventually succeeds.

VI. THAT the Appellant is ready and willing to provide security in the form of a bank guarantee or in such other manner as the Honourable Court may direct for the due performance of the decree that may ultimately be binding on it in the matter aforesaid giving rise to this appeal.

VII. THAT this application has been filed without unreasonable delay and the interests of justice would be best served if the orders sought were granted.

3. The application was opposed by the respondent through replying affidavit filed by I, KISIANG'ANI EDDAH, the advocate who stated as follows- THAT I am well conversant with the matter before this Court and well versed with the facts of this case and all circumstances touching on the subject matter of this suit and in my capacity aforesaid competent to swear this affidavit. THAT I have read and understood the contents of the Applicants' Notice of Motion and the Affidavit in support thereto and wish to state as follows: THAT the applicant has not demonstrated that it has met the threshold for grant of stay orders since it has failed to demonstrate the substantial loss to be suffered if stay is not granted. THAT the appellant has not met the threshold required under Order 42 Rule 6 of the Civil Procedure Rules, 2010 for grant of the orders sought which in the circumstances cannot issue whatsoever. THAT the applicant has not demonstrated that it has an arguable appeal which will be rendered nugatory in case stay of execution is not granted as there was no competent objection of the award of the director DOSH before the trial court neither was there an appeal on the said award to warrant setting aside of the trial court's judgement. THAT the applicant never objected to the award as assessed by the director DOSH in its Reply to demand and sought for time to make good the claim. (Attached and Marked EK 1 is a copy of the Reply to demand). THAT I thus urge the court to find no merit in the present application and dismiss it with costs. THAT in the unlikely event that this court is inclined to allow the application, the applicant should be ordered to deposit half of the decretal sum to the respondent and deposit the other half in court within 30 days failure to which the stay should automatically lapse.

### Decision



4. The applicant filed submissions. The respondent relied on the affidavit of Kisingiani, whose contents are reproduced above.
5. Rule 73 of the Employment and Labour Relations Court Rules of 2024 provides as follows- ‘(2) Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.’ The relevant rule under the Civil Procedure Rules is Order 42 Rule 6 to wit- ‘6. Stay in case of appeal [Order 42, rule 6]

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside. (2) No order for stay of execution shall be made under subrule (1) unless—(a) the court is satisfied that 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.”

6. The court established that there was no unreasonable delay in filing the application. The impugned decision was dated 12th August 2025, and the memorandum of appeal, dated 3rd September 2025, was filed on the same day. The appeal was thus filed within the 30-day statutory period for appealing from the magistrate’s court to this court. The appeal raised grounds of a fair hearing, alleging the adoption of the award without giving the applicant the right to be heard, the adoption of the award prematurely—that is, before the expiry of the 60 statutory days under the rules of objection—and whether the trial court had jurisdiction to adopt the award. The court finds the foregoing to be arguable grounds of appeal.

6. In *Butt -vs Rent Restriction Tribunal (1982) KLR 417* the Court of Appeal (Madan J.A) gave guidance on how a Court should exercise discretion in an application for a stay of execution, that: -

“If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings.

It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church (No 2) 12 Ch D (1879) 454 at p 459*. In the same case, Cotton LJ said at p 458: “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

6. On substantial loss, this being a money decree, the loss is disclosed as the respondent did not demonstrate capacity to repay the money in the event of a successful appeal by filing an affidavit of means.



6. On the issue of security, this is a mandatory condition under section 42(6) of the Civil Procedure Rules. The appeal concerns the ruling on the application to set aside the adoption of the Order of DOSH. The applicant stated that it was willing to comply with the court's conditions for granting the stay and sought to deposit a bank guarantee. Conversely, the advocate for the respondent sought payment of the ½ of the decretal amount and the rest be deposited in court. The respondent did not file affidavit of means. I am inclined to allow the deposit of a bank guarantee in court for the amount awarded within 30 days. It is so Ordered.
6. Costs of the application to the respondent to abide by the outcome of the appeal.
6. The appeal is to be heard on a priority basis. The record of appeal should be filed within 30 days along with written submissions. The respondent must file submissions within 14 days of service. Mention on 8th May 2026 to confirm compliance and to issue the judgment date.
6. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13<sup>TH</sup> MARCH, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Applicant/Appellant – Mutua

Respondent- Ms. Kisiangani

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