

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

**MISC. APPLICATION NO. E118 OF 2025**

**MGM MUTHU HOTELS ..... APPLICANT**

**VERSUS**

**KAKA KAMAU & CO. ADVOCATES ..... RESPONDENT**

**RULING**

The applicant, MGM Muthu Hotels, filed an application dated 13 February 2026 seeking a stay of execution pending the hearing and determination of the intended appeal. The application is supported by Angela Muhua, the legal officer, on the grounds that the applicant is seeking to file an appeal from the court ruling herein. The applicant thus seeks a stay of execution to allow them to proceed with the intended appeal. Unless such an order is allowed, the applicant shall suffer loss and damage.

In reply, the respondent filed the Replying Affidavit of Ernest Kaka Kamau, arguing that the applicant has since applied for a time extension to file the reference to taxation, which was dismissed. Being dissatisfied, a Notice of Appeal was filed against the dismissal. This being a negative order, it cannot be stayed. The substratum of the present application has been addressed. The court stands *ex officio* and lacks jurisdiction to hear and determine the instant application.

The respondent also filed Notice of Preliminary Objections dated 23 February 2026 on the grounds:

- a) The court is *functus officio*, having pronounced itself with finality on the same application for enlargement of time.
- b) The court, being the court to admit and hear any intended appeal, lacks jurisdiction to entertain an application seeking a stay of execution.

The respondent filed written submissions and asserts that the court is *functus officio*, having addressed the reference herein with a dismissal. The applicant cannot apply under the same reference to challenge a negative order of dismissal by seeking a stay of execution to address an intended appeal, as held in **Asige Keverenge & Anyanzwa Advocates v Kenya Revenue Authority & another [2021] eKLR**. Upon the dismissal of the client/advocate application, there is nothing to stay. The negative order will not facilitate any possible stay as sought by the applicant. The court stands *functus officio*, having rendered itself herein.

The respondent submitted that the applicant has not demonstrated any good cause for a stay of execution. There is no imminent execution as alleged. The application relates to the

advocate's bill of costs; the advocate is a person of means, and whatever is paid can be recovered. The instant application is an abuse of the court process.

### **Determination**

The reference herein filed through a miscellaneous application was for the purpose of the applicant seeking orders that the court be pleased to enlarge the time for filing a Notice of Objection to the taxing officer's decision dated 20 March 2025 in Mombasa ELRC Misc. E057 of 2024.

The application was dismissed through a ruling delivered on 29 January 2026.

Indeed, as the respondent has submitted, there are negative orders following the reference.

The purpose of the application herein was addressed with finality.

The principle is addressed in [Mbogo v Mbogo \[2026\] KECA 319 \(KLR\)](#), which holds that an order of stay of execution will not issue against a negative order.

In **Dock Workers Union v Director of Occupational Safety and Health Services & 6 others [2025] KECA 2217 (KLR)**, the Court of Appeal held that what the applicant had sought to be stayed was a negative order dismissing the application. Hence, upon dismissal, there was no requirement that any person do anything, or refrain from doing anything or take any step either way.

In this case, this court, having determined the single purpose of the application herein, the reference seeking to enlarge time to file the reference out of time, addresses the matter with finality. The court stands *functus officio*. There is nothing to stay.

In view of the negative order, it becomes apparent that there is nothing that we have been called upon to stay.

**The objections dated 23 February 2026 are with merit. The application dated 13 February 2026 is an abuse of the court process and is hereby dismissed with costs to the respondent.**

Delivered in open court at Mombasa on this 19th day of March 2026.

M. MBARŪ

JUDGE