



Mason Services Limited v Kengen Staff Retirement Benefits Scheme (Environment and Land Appeal E278 of 2025) [2026] KEELC 1590 (KLR) (19 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1590 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E278 OF 2025
EK WABWOTO, J
MARCH 19, 2026

BETWEEN

MASON SERVICES LIMITED APPELLANT

AND

KENGEN STAFF RETIREMENT BENEFITS SCHEME RESPONDENT

RULING

1. This ruling is in respect to the application dated 13th March 2026 seeking for a grant of an interim stay pending the hearing and determination of the Appellant's/Applicants application dated 24th February 2026. The application is premised on the grounds on its face and supported by the affidavit sworn by Stephen Njoroge on 13th March 2026.
2. The application was opposed by the Respondent vide a Replying Affidavit sworn by Anthony Mang'eli on 16th March 2026.
3. During the plenary hearing of the application, Learned Counsel Mr. Manyara for the Applicant submitted that the Respondent had issued a proclamation notice which expires on 19th March 2026. The Applicant has challenged the order that awarded the Respondent Kshs. 2,018,809.45 and has been paying rent. The said amount is undue to the Landlord. The earlier order of stay was to lapse within 15 days. The Respondent had carted away the goods of the tenants without any proclamation and it took the intervention of the OCS Parklands Police Station to have them returned.
4. It was further submitted that in the other application dated 24th February 2026 which is still pending for determination, the Applicant is seeking orders for provision of an alternative security and hence the need to grant stay orders at this stage. There is no prejudice that would be suffered by the Landlord.
5. Learned Counsel Mr. Abuya for the Respondent while opposing the application argued that the application is frivolous. The court had earlier granted a conditional stay order which was not complied with and hence the court cannot be called to review the said decision. Review is only limited to issues of



- apparent error or mistake on record. No evidence has been provided to confirm the same. The process of execution is not itself a reason for stay. The Applicant did admit that there were rent arrears and they have not come to court with clean hands and as it stands there are no orders to extend the same.
6. On the aspect of substantial loss, it was argued that the same has not been demonstrated. The court has no power to rewrite contract for parties and any grant of stay is opposed.
 7. Having considered the application, rival affidavits filed and oral submissions made, the main issue for consideration is whether the Applicant has met the threshold for grant of the interim order of stay sought.
 8. Order 42 Rule 6(2) of the Civil Procedure Rules requires an applicant seeking stay to demonstrate that substantial loss may result unless the order is made, the application has been made without unreasonable delay and that such security as the court orders for the due performance of the decree has been provided.
 9. It is also a settled principle that where a conditional stay lapses due to non-compliance, the Applicant must provide a satisfactory explanation to warrant the exercise of the court's discretion afresh.
 10. In the instant case, it is not disputed that the Applicant failed to comply with the condition requiring the deposit of Kshs. 2,018,809.45 within 15 days the effect of that failure was automatic lapse of the stay. This promoted the Applicant to file an application for provision of alternative security which is pending for hearing on 14th April 2026.
 11. The Applicant argues that if stay will not be granted its business will be affected.
 12. The court must weigh the Respondent's right to enjoy the fruits of judgment. As was stated in the case of Kenya Shell Ltd =Versus= Kibiru & Another (1986) KLR 410 that substantial loss is the cornerstone of an application for stay and that the court must balance the competing interests of the parties.
 13. In the instant case, the court notes that there is a pending application dated 24th February 2026 which seeks to address the issue of alternative security. Hence therefore the court needs to consider the same when determining this application.
 14. It would be therefore unjust to completely shut out the Applicant before the said application is heard especially where execution is imminent. The court must therefore strike a balance of upholding its earlier orders and preserving the substratum of the pending application due for 14th April 2026.
 15. In the circumstances, the court proceeds to grant an interim order of stay pending the hearing and determination of the Applicant's application dated 24th February 2026. The Applicant shall within 7 days from today pay the costs of this application to the Respondent assessed at Kshs. 20,000/= and the auctioneers costs assessed at Kshs. 100,000.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF MARCH, 2026.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Manyara for the Appellant/Applicant.

Mr. Abuya for the Respondent.



Court Assistants: Mary Ngoira and David Ngoosa.

