

**REPUBLIC OF KENYA**

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

**CAUSE NO. E006 OF 2022**

**SAID AHMED ZAMZAM ..... CLAIMANT**

**VERSUS**

**GULF AFRICAN BANK LIMITED ..... RESPONDENT**

**RULING**

The respondent, Gulf African Bank Limited, filed an application dated 26 January 2026, under the provisions of section 12(3) of the Employment and Labour Relations Court Act and rules 21, 45 and 73 of the Employment and Labour Relations Court (Procedure) Rules, seeking Orders:

1. *Spent.*
2. *There is a stay of execution of the judgment delivered on 30 January 2025 and the resultant decree pending the hearing and determination of the application.*
3. *The ruling delivered on 11 December 2025, dismissing the respondent's Notice of Motion dated 5 May 2025, be reviewed.*
4. *In place of the dismissal order, there is a stay of execution of the judgment delivered on 30 January 2025 and the resultant decree pending the hearing and determination of the Mombasa Court of Appeal No. E083 of 2025.*
5. *In the alternative to (3) and (4) above, the court be pleased to permit the respondent to offset part of the loan owed by the claimant using the decretal sum.*
6. *Costs of the application in Civil Appeal No. E083 of 2025.*

The application is supported by the Affidavit of Lawi Sato, the respondent's senior legal officer, who avers that judgment herein was delivered on 30 January 2025 and that the claimant was awarded general damages of Ksh. 1,000,000. The respondent filed an application for a stay of execution, which was dismissed on 11 December 2025, primarily for lack of evidence of an appeal. In fact, an appeal had been filed in the Mombasa Court of Appeal, Civil Appeal No. E083 of 2025.

The appeal was not presented because it was filed after the application for a stay, and the claimant did not dispute it.

Upon the dismissal of the earlier application, the claimant has caused Murphy Auctioneers to proclaim the respondent's movable assets in execution of the judgment herein. The proclaimed goods will be removed on 28 January 2026 despite the fact that the claimant's knowledge of the appeal and that he owes the respondent Ksh. 6,088,078.01 at 22 July 2024. It is inequitable for the claimant to execute for the decretal amount but fail to repay the loan despite an order for repayment at staff rates.

Sato avers that there are sufficient reasons for the court to review its 11 December 2025 ruling and either grant a stay of execution pending appeal or order that the amount be applied towards the outstanding loan. The respondent is willing to deposit the decretal sum in court to secure both interests pending the determination of the appeal. If a stay is not allowed, execution will proceed to the prejudice of the respondent.

In reply, the claimant filed his Replying Affidavit and avers that the respondent has since filed an application seeking a stay of execution, which the court dismissed. The respondent had the onus to prove and present evidence of appeal, but failed to do so, leading to the dismissal of the application.

The claimant avers that auctioneers have issued a proclamation of attachment and should not be deterred from accommodating the respondent. The due loan balance is not Ksh. 6,088,078 as alleged. On 16 September 2022, Thaara Auctioneers served Notice of Intention of Sale by Public Auction of plot No. 4119/1/MN his property used to secure the loan facility with the respondent. On 19 September 2022, he was served with notice to sell the same property after failing to redeem it.

The sale of the property, which was undertaken by public auction on 24 November 2022, was to settle the amount of Ksh. 5,168,888.88 owed to the respondent as the balance of the loan facility that the court indicated should be repaid at staff rates. Since the sale, the respondent has not served the statutory notice of sale, save for the one dated 30 July 2024.

The claimant argues that, as charged, the respondent has exercised the statutory power of sale, as more than 4 years have passed since the Notice of Sale was issued. The judgment that is sought to be stayed was issued more than 6 months ago, and the delay in addressing it has not been explained.

### **Determination**

The respondent submitted that during the hearing of the application dated 5 May 2025 seeking orders of stay of execution of the judgment delivered on 30 January 2025, there was an omission to indicate that the Mombasa Court of Appeal Civil Appeal No. E034 of 2025 had been filed and hence seeks a review of the court ruling delivered on 11 December 2025.

Indeed, as submitted by the claimant, an applicant seeking a stay of execution has the duty to present all materials necessary to support the case. The court has since addressed itself with regard to orders seeking a stay of execution of its judgment delivered on 30 January 2025. It stands *ex officio*.

Is a review of an application seeking a stay of execution permissible?

Rule 73 of the Employment and Labour Relations Court (Procedure) rules addresses a review where there is discovery of a new matter, an error on the face of the record, a need for clarification, or other sufficient cause. None of these elements has been gone into by the respondent. The assertion that there was no dispute by the claimant that an appeal had been filed is not sufficient cause to fail to attach a critical record in support of the application.

On whether the respondent should apply the decretal sum to offset the loan amount, indeed, the respondent admits that the sum of Ksh. 6,088,078.01 was on 22 July 2024. There is currently no update on the claimant's exercise of the Power of Sale on the subject property to secure the loan facility.

To disturb the judgment at this stage would impede the rule of law.

**Accordingly, the application dated 26 January 2026 is declined. Costs to the claimant.**

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

M. MBARŪ

JUDGE