

**IN THE COURT OF
APPEAL AT MOMBASA**

(CORAM: GATEMBU, LAIBUTA & NGENYE, JJ.A.)

CIVIL APPEAL (APPLICATION) NO. E054 OF

2025 BETWEEN

VALAR FRONTIERS LIMITED.....APPLICANT

AND

JOHN ROBERT WALKER.....RESPONDENT

(Being an application for stay of execution against the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Mombasa (A. Nzei, J.) dated 8th November 2024

in

ELRC No. 161 of 2018)

RULING OF THE COURT

1. The applicant, Valar Frontiers Limited, employed the respondent, John Robert Walker, as a Security Project Manager in 2016. In March 2018, the respondent instituted suit against the applicant before the Employment and Labour Relations Court (ELRC) at Mombasa claiming that the applicant constructively and unfairly terminated his employment. That suit appears to have been determined by the ELRC based on the pleadings and documents filed by the parties.

2. In a judgment delivered on 8th November 2024, the ELRC (**A. K. Nzei, J.**) upheld the respondent's claim and found that his employment was constructively and unfairly terminated. The respondent was awarded a total of USD 135,761.18 made up of: USD 91,875 as compensation for unfair termination of employment; USD 13,125 one month salary in lieu of notice; USD 2,836.36 accrued leave not taken; USD 11, 931.82 severance pay for 20 days; and USD 16,000 being October 2017 performance bonus.
3. Aggrieved, the applicant filed the present appeal within which the application under consideration dated 28th March 2025 was made. The applicant seeks an order for stay of execution of the judgment and decree made on 8th November 2024 pending hearing and determination of the appeal.
4. We heard the application on 7th October 2025. Learned counsel **Mr. Gregory Makambo** appeared for the applicant and orally highlighted the applicant's written submissions dated 11th August 2025. Learned counsel **Ms. Wambui Kibicho** for the respondent made oral submissions in opposition to the

application.

5. The legal principles on which applications of this nature are considered are well established. In that regard, counsel for the applicant relied on, among other authorities, the case of **National Industrial Credit Bank Limited vs. Aquinas Francis Wasike & Another [2006] KECA 333 (KLR)**, which supports the proposition that an applicant seeking orders of stay pending appeal needs to demonstrate that the intended appeal is arguable and that, should the interim orders sought be declined and the appeal ultimately succeeds, it would be in vain.
6. Having considered the grounds appearing on the face of the application as supported by the affidavit of Joanna Oser as well as the submissions by learned counsel for the applicant, we are satisfied that the applicant's appeal is not frivolous. There is, for instance, the complaint that the ELRC erred in determining the dispute based on highly contested averments in the pleadings without *viva voce* evidence. There is also the complaint that the trial court erred in concluding without firm basis that the applicant admitted having constructively terminated the respondent's employment; and that the

ELRC

unfairly compensated the respondent with awards beyond those set by law. In our view, the appeal is arguable.

7. As to whether the applicant has demonstrated that the appeal will be rendered nugatory unless the orders sought are granted, the applicant contends that the judgment amount is huge; that the respondent is a foreign national and is not resident in Kenya, and has no known assets in Kenya and is likely to skip the jurisdiction of the court and will not be able to refund the amount in question should the appeal succeed.
8. Although learned counsel for the respondent stated from the bar that the respondent is resident in Kenya and has since found alternative employment in Kenya, those claims are not supported by any evidence. The respondent did not present any material, not having filed any affidavit in reply, to support that claim. Where, as here, a claim is made that the respondent will not be able to refund the decretal amount, it behooves the respondent to show otherwise. See **National Industrial Credit Bank Limited vs. Aquinas Francis Wasike & Another** (above).

9. Based on the foregoing, this, in our view, is a proper case for the Court to exercise its discretion in the applicant's favour. Prayer 3 of the application dated 28th March 2025 is granted with the result that an order is hereby issued staying execution of the judgment and decree made on 8th November 2024 in Mombasa ELRC Case No. 161 of 2018 pending the hearing and determination of the applicant's appeal.
10. Costs of the application shall abide by the outcome of the appeal.

Dated and delivered at Mombasa this 25th day of March 2026.

S. GATEMBU KAIRU, FCIArb, C.Arb.

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JUDGE OF APPEAL

DR. K. I. LAIBUTA, CArb, FCIArb.

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JUDGE OF APPEAL

G.W. NGENYE-MACHARIA

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JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

Signed

DEPUTY REGISTRAR