



Anglican Church of Kenya Diocese of Embu v Gichangi (Employment and Labour Relations Appeal E050 of 2025) [2026] KEELRC 969 (KLR) (17 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 969 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E050 OF 2025**

SC RUTTO, J

APRIL 17, 2026

BETWEEN

ANGLICAN CHURCH OF KENYA DIOCESE OF EMBU APPLICANT

AND

REV. ELIJAH GICHANGI RESPONDENT

RULING

1. This Ruling is with respect to the Notice of Motion dated 19th December 2025 filed by the Appellant/Applicant herein. Through the Notice of Motion, the Applicant seeks the following orders;
 1. Spent.
 2. Spent.
 3. That this Honorable Court to grant a stay of proceedings in MCELRC No. E006 of 2025 Rev. Elijah Gichnagi Wanja v Anglican church of Kenya diocese of Embu pending and hearing and determination of the Appellant's Appeal.
 4. That the costs of this application be in the cause.
2. The Application is premised on the grounds set out on its face and is supported by an affidavit sworn by the Applicant's Archdeacon George Toto on 19th December 2025.
3. The grounds in support of the Motion are that the Chief Magistrates' Court at Embu, in its Ruling delivered on 7th October 2025 in MCELRC No. E006 of 2025, Rev. Elijah Gichangi v Anglican Church of Kenya Diocese of Embu, dismissed the Applicant's application challenging the court's jurisdiction to determine the dispute. The Applicant subsequently lodged an appeal against that decision before the Employment and Labour Relations Court in ELRC Appeal No. E050 of 2025.



4. The Applicant further avers that it had filed an application before the Chief Magistrates' Court at Embu seeking a stay of proceedings pending the determination of the appeal, but the same was dismissed on 4th December 2025, and the matter was fixed for hearing on 10th March 2026.
5. The Applicant contends that unless the orders sought are granted, the proceedings before the Chief Magistrates' Court are likely to proceed to conclusion expeditiously, thereby rendering the appeal nugatory and occasioning substantial prejudice, particularly as the issue of jurisdiction is fundamental.
6. The Application is opposed through the Replying Affidavit sworn by Rev. Elijah Gichangi Wanja, the Respondent, on 6th January 2026. The Respondent deposes that the Application is res judicata in light of the Ruling on the Notice of Motion dated 31st October 2025, in which the prayer for stay of proceedings was dismissed. He further contends that the Applicant is engaging in forum shopping, having already litigated the same issue before the lower court.
7. He further avers that the Applicant is improperly seeking to appeal the Ruling of the lower court through the present Application. He states that following the delivery of the Ruling on 4th December 2025, the Applicant sought leave to appeal but instead proceeded to file a similar application before this Court.
8. In the Respondent's view, the Application is a delaying tactic brought in bad faith and intended to frustrate his efforts to prosecute his claim arising from the alleged unfair termination of employment.
9. The Respondent further contends that the Applicant has not demonstrated any exceptional circumstances to justify the grant of an order of stay of proceedings.

Submissions

10. The Application was canvassed by way of written submissions. Both parties complied and the Court has given due consideration to the said submissions.

Analysis and Determination

11. The issue arising for determination is whether the Application is res judicata and, if not, whether the Applicant has met the threshold for the grant of an order staying proceedings at the trial court pending the hearing and determination of its appeal.

Res judicata

12. The Respondent contends that the present Application is res judicata, on the basis that the Appellant had previously filed a similar application before the trial court which was dismissed.
13. Order 42 Rule 6(1) of the Civil Procedure Rules, which is applicable to the determination of this issue, provides as follows:

[42](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.



14. It is clear from the foregoing rule that a party is permitted to apply for stay pending appeal before the appellate court, whether or not a similar application was granted or declined by the court appealed from.
15. Accordingly, the fact that the Applicant previously sought stay of proceedings before the trial court under Order 42 Rule 6 does not preclude it from bringing a similar application before this Court.
16. On this issue, the Court concurs with the decision in *Patrick Kalava Kulamba & another v Philip Kamosu And Roda Ndanu Philip* (Suing as the legal representative of the estate of Jackline Ndinda Philip (Deceased) [2017] KEHC 3978 (KLR) that so long as an appeal from the substantive decision of the lower court has been lodged, an application under Order 42 Rule 6 (1) of the Civil Procedure Rules can be entertained afresh in the High Court.
17. Accordingly, the Court finds that the present Application is not *res judicata* merely on the ground that a similar application was previously filed before the trial court and declined.

Stay of proceedings

18. It is trite that the grant or refusal of an order for stay of proceedings lies within the court's discretion. Such discretion ought to be exercised judiciously upon consideration of the merits of the case and the overarching interests of justice. This position was articulated by Ringera J (as he then was) in *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000*, wherein he stated as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the *prima facie* merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”
19. In the present case, the Applicant has posited that it has good grounds of appeal, while the Respondent contends that the Applicant has not established that the Appeal has any chances of success.
20. As was held in *Athuman Nusura Juma v Afwa Mohamed Ramadhan* [2016] eKLR, the question of whether an intended appeal is meritorious is not for determination by a court when dealing with an application of this nature but is a matter reserved for the court seized of the substantive appeal.
21. In the circumstances, the Court's inquiry at this juncture is confined to assessing the *prima facie* merits of the intended appeal, not in terms of its likelihood of success, but rather whether it raises arguable issues worthy of consideration.
22. With that being said, the Court has considered the grounds of appeal raised by the Appellant and observes that they principally concern the jurisdiction of the trial court to hear and determine the claim pursuant to Section 89 of the *Employment Act*.
23. In this regard, the Court finds that allowing the proceedings before the trial court to continue would be self-defeating should the appellate court ultimately find that the trial court lacked the requisite jurisdiction to entertain and determine the matter.



- 24. In the premises, the Court is satisfied that unless the proceedings are stayed as sought, the substratum of the intended appeal will be undermined, thereby rendering the appeal nugatory.
- 25. Consequently, the application dated 31st October 2025 is hereby allowed, with costs to abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED AT NYERI THIS 17TH DAY OF APRIL 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Onyango for the Appellant/Applicant

No appearance for the Respondent

Ndati Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

