

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

(Before Hon. Lady Justice Monica Mbarũ)

APPEAL NO. E241 OF 2025

SWALEH BAHAMADI alias BAMASON BAMASON.....APPELLANT

VERSUS

PAULINE KAHINDI CHARO.....RESPONDENT

RULING

The Appellant filed an application dated 25th February 2026 under the provisions of Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, seeking orders pending the hearing and determination of the appeal, and a stay of execution of the trial court judgment in Mombasa CMELRC No. E310 of 2024 and the costs to abide by the outcome of the appeal.

The application is supported by the Supporting Affidavit of Swaleh Bahamadi, the Appellant, who avers that following the judgment of the trial court, the Respondent has instructed auctioneers to proceed with execution before the appeal is determined. On 23rd February 2026, there were auctioneers sent to proclaim the applicant's goods, which are essential for the household. If the

execution were to proceed, the Respondent would sell the household goods for the Appellant. If the appeal is allowed, the Respondent will not be able to return the proclaimed goods, and hence, in the interests of justice, it is only fair to grant a stay of execution. There is a strong appeal with a high likelihood of success; hence, the orders sought are to be issued.

In reply, the Respondent filed her Replying Affidavit, in which she avers that her employment was unfairly terminated by the Appellant on 10 April 2024. On 28 November 2025, the trial court issued a judgment in her favour and an award of Ksh. 385,362.80 plus costs and interests.

The Claimant avers that the Appellant's refusal to settle the judgment sum has led to execution proceedings, which are lawful and justified, and that the orders sought should be issued. Under the Warrants of Attachment, the Appellant owes the sum of Ksh. 524,048, which remains unpaid.

The Appellant filed written submissions.

The written submissions are analysed, and the single issue for determination is whether the court should allow a stay of execution pending the hearing and determination of the appeal.

The Appellant relied on the provisions of Rule 12 of the Employment and Labour Relations Court (Procedure) Rules (the Court Rules), which relate to the

time of filing an appeal. Under the Court Rules, execution proceedings are regulated under the Civil Procedure Act and the Rules thereto. In this regard, an applicant seeking a stay of execution must satisfy the conditions under Order 42 Rule 6 of the Civil Procedure Rules.

Fundamentally, an applicant must demonstrate there is sufficient cause to justify the grant of an order of stay of execution as held in **Antoine Ndiaye v African Virtual University [2015] KEHC 6783 (KLR)**. In this regard, Sufficient cause, being a technical as well as legal requirement, depends entirely on the Applicant satisfying the court on the following conditions:

- a) Substantial loss may result to the applicant unless the order is made,*
- b) The application has been made without unreasonable delay, and*
- c) Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.*

These conditions are the essence of Order 42 Rule 6 of the Civil Procedure Rules. The conditions share an inextricable bond such that the absence of one will affect the exercise of the discretion of the court in granting a stay of execution, as reinforced in **Mukuma v Abuoga (1988) KLR 645**.

In this case, the Appellant asserts that he is aggrieved by the judgment of the trial court, and auctioneers have visited his home and proclaimed household

goods, and if allowed to proceed, he will suffer irreparable loss and damage. The Appellant also asserts that he has a good appeal, and if execution proceeds, his household goods will have been sold to his detriment.

Save for such assertions, the Appellant has not addressed the conditions necessary under Order 42, Rule 6. Should the court then allow the stay of execution?

What is apparent to the court at this stage is that an appeal is pending hearing and determination. The appeal was filed immediately after the trial court delivered judgment on 28 November 2025. Although no Record of appeal has been filed as required under Rule 12 and 15 of the Court Rules, on the stay of execution application, such a stay should issue to allow the court to hear the appeal on the merits. Save the conditions to issue the order that the Appellant shall deposit the judgment sum of Ksh. 385,362.80 in court within 14 days, closing on 8 May 2026.

Additionally, the Appellant has not addressed the provisions of Rule 15 of the Court Rules. There is no record of an appeal filed within the stipulated timelines. The Record shall be filed within 14 days, failure to which the appeal shall stand dismissed having abated.

Accordingly, the application dated 25th February 2026 is allowed, and the judgment in Mombasa CMELRC No. E310 of 2024 is hereby stayed on condition that the Appellant shall deposit the sum of Ksh. 385,362.80 in

court in 14 days lapsing on 8th May 2026. The Appellant shall further file the Record of Appeal and serve within 14 days; failure to do so shall result in the appeal abating as of 8th May 2026.

Costs awarded to the Respondent.

Orders accordingly.

Delivered in open court at Nairobi, this 23rd day of April 2026

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistant: Catherine and Omar

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