

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL NO. E433 OF 2025

(Before D. K. N. Marete)

INTERNATIONAL RESERVE GROUP.....APPELLANT / APPLICANT

VERSUS

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....RESPONDENT

RULING

This is an application dated 18th December, 2025 brought under Section 12(3)(i) and (viii) of the Employment and Labour Relations Court Act and Rules 44 and 45(3) of the Employment and Labour Relations Court (Procedure) Rules, 2024. The application seeks: a stay of the proceedings in Nairobi MCELRC Cause No. E466 of 2022 pending the *inter partes* hearing and determination of this application and a stay of the said proceedings pending the hearing and determination of the substantive appeal.

The application is supported by the affidavit of Haim Cohen, a Director of the Appellant, sworn on 18th December, 2025. The background to this matter is that the Respondent Union filed a claim on behalf of its member, Mr. Vincent Mulindi, in Nairobi MCELRC Cause No. E466 of 2022 at the Chief Magistrate's Court, Milimani, seeking compensation for alleged unlawful termination. On 3rd October, 2025 the Appellant raised a Preliminary Objection challenging the jurisdiction of the Magistrate's Court on the ground that the suit, having been filed by a

registered trade union on behalf of its member, constitutes a trade dispute within the meaning of Section 2 of the Labour Relations Act, 2007. Therefore, exclusive original jurisdiction would be vested in this Court by virtue of Article 162(2)(a) of the Constitution and Section 12(1) of the Employment and Labour Relations Court Act, 2011. Magistrates' courts are expressly excluded by Gazette Notice No. 6024 of 2018.

By a ruling dated 14th November, 2025 the trial court dismissed the preliminary objection holding that the dispute was an employment dispute and not a trade dispute since the Union was suing in a representative capacity for an individual employee and that the magistrate's court therefore had jurisdiction. A pre-trial conference was scheduled for 4th February, 2026. The Appellant now appeals against that ruling and seeks a stay of the lower court proceedings pending the hearing and determination of the appeal.

The Applicant in its written submissions dated 28th January, 2026 submits that the appeal raises a fundamental and arguable point of law, namely whether a suit filed by a registered trade union on behalf of its member constitutes a trade dispute within the exclusive original jurisdiction of this court. The Applicant relies on the consistent line of authority of this court in **Kenya Engineering Workers Union v Bhachu Industries Ltd [2025] eKLR**, **Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA) v Kombanira & Another [2025] eKLR**, and **Kenya Plantation & Agricultural Workers Union v Eastern Produce (K) Ltd [2024] eKLR**, all of which hold that the involvement of a registered trade union as claimant is the decisive factor invoking the exclusive jurisdiction of this court. The Applicant further relies on **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** for the proposition that jurisdiction is everything and a court acting without it

must down its tools. On the nugatory nature of the appeal, the Applicant relies on **Okoth v Absa Bank Kenya Plc [2025] KEELC 3164 (KLR)**, where this court recognised that an appeal on jurisdiction constitutes an exceptional circumstance warranting a stay of proceedings, as any proceedings conducted before a court found to lack jurisdiction would be a nullity *ab initio*. The Applicant further submits that the application was brought expeditiously, within one month of the impugned ruling and well before the scheduled pre-trial conference of 4th February, 2026.

The Respondent in its written submissions dated 27th January, 2026 opposes the application and prays that it be dismissed with costs. The Respondent submits that the appeal raises no arguable issues, as the learned magistrate's ruling was well reasoned and properly founded in law. The Respondent relies on **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** and **Kenya Wildlife Service v James Mutembei, Meru Civil Appeal No. 40 of 2018**, for the proposition that a stay of proceedings is a grave and serious judicial action that impinges on the right of access to justice and the right to a fair trial without delay and that the threshold for its grant is high, stringent, and to be exercised sparingly and only in exceptional cases. The Respondent further submits that the Applicant has not demonstrated a *prima facie* arguable appeal nor any substantial loss, and that a stay would highly prejudice the Respondent's member, Mr. Vincent Mulindi, considering that this matter has been pending since 2022.

I have carefully considered the application, the rival affidavits, the submissions of both parties and the law. The test for the grant of a stay of proceedings pending appeal was well articulated in **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** where the court held that whether or not to grant a stay of proceedings is a matter of judicial discretion to be exercised in the interest of justice. That in all cases the sole question is whether it is in the

interest of justice to order a stay, and that in deciding the question the court should weigh the pros and cons of granting or not granting the order, bearing in mind such factors as the need for expeditious disposal of cases, the *prima facie* merits of the intended appeal in the sense of whether it is an arguable one, the scarcity and optimum utilisation of judicial time and whether the application has been brought expeditiously.

The principles that guide the court in determining whether to grant a stay of proceedings may therefore be distilled as follows;

1. Whether the appeal raises arguable and serious triable issues.
2. Whether the appeal would be rendered nugatory if stay is denied.
3. Whether the application was made timeously and in good faith.
4. Whether prejudice would be occasioned to the Respondent.

On the question of whether the appeal raises arguable issues, I am satisfied that it does. The appeal raises a substantial point of law on whether a suit filed by a registered trade union on behalf of an individual member constitutes a trade dispute within the exclusive original jurisdiction of this court, and whether the learned magistrate was right to hold that the dispute was merely an employment dispute. This is a live legal question, particularly in the light of the consistent body of authorities from this court holding that the involvement of a union as claimant is the decisive jurisdictional factor. A question that goes to the very root of the competence of the trial court to hear the matter at all is by its nature a serious and arguable one. This limb is established.

As to whether the appeal will be rendered nugatory, this court is equally satisfied and convinced that this will be the case. This Court recognised in **Okoth v Absa Bank Kenya Plc [2025] KEELC 3164 (KLR)** that an appeal on jurisdiction is exceptional in nature, since if the appellate court finds in the Appellant's favour all proceedings in the lower court would be rendered a nullity *ab initio*. Unlike an appeal on the merits, no amount of subsequent relief can undo the waste of resources and time occasioned by proceedings before a forum found to have lacked jurisdiction altogether. Again, this limb is established.

On timeliness and good faith, the impugned Ruling was delivered on 14th November, 2025. The appeal was filed on 11th December, 2025 and this application on 18th December 2025, well before the pre-trial conference scheduled for 4th February, 2026. The application was brought expeditiously and in good faith. This limb is also established.

On prejudice and the balance of convenience, I am alive to the fact that this matter has been pending since 2022 and that a stay causes further delay to the Respondent's member. However, as held in **Samuel Kamau Macharia v Kenya Commercial Bank Limited [2012] eKLR**, jurisdiction is a constitutional and statutory gift that cannot be conferred through acquiescence or the passage of time. Allowing the lower court to proceed to trial only for those proceedings to be declared a nullity would occasion far greater prejudice and waste than a temporary stay pending resolution of the jurisdictional question. Any prejudice to the Respondent from the stay is moreover compensable in costs should the appeal fail. The balance of convenience tilts in favour of granting the stay.

A consideration of the respective cases of the parties tilts the application in favour of the Applicant. The Applicant has established a substantial case for the grant of a stay of proceedings in the interest of justice. This is in tandem with the law, practice and precedent as established.

I am therefore inclined to allow the application and order as follows;

- (i) The application for stay of proceedings be and is hereby allowed.
- (ii) The proceedings in Nairobi MCELRC Cause No. E466 of 2022 are hereby stayed pending the hearing and determination of Appeal No. E433 of 2025 before this Court.
- (iii) In order to mitigate prejudice to the Respondent's member, the appeal shall be prosecuted expeditiously on the part of both parties.
- (iv) The costs of this application shall be in the appeal.

Delivered, dated and signed this **17TH** day of **APRIL**
2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Miss Achieng instructed by Anne Babu & Co. Advocates for the Appellant/Applicant
2. Miss Wanyama for the Respondent Union

