



**University of Nairobi v Shivachi (Appeal E004 of 2026)
[2026] KEELRC 983 (KLR) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 983 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E004 OF 2026
DKN MARETE, J
APRIL 17, 2026**

BETWEEN

UNIVERSITY OF NAIROBI APPELLANT

AND

FANICE M SHIVACHI RESPONDENT

RULING

- 1 This is an application dated 8th January, 2026 seeking an unconditional stay of execution of the judgement and decree in MCELRC No. 2051 of 2022 delivered on 11th December, 2025 pending hearing and determination of this appeal.
2. The application is grounded as follows;
 - i. That this appeal raises arguable issues and has high chances of success.
 - ii. The Appellant is apprehensive that the Respondent may proceed to commence execution against the Appellant thus defeating the substratum of this appeal and rendering the consequent judgment a mere paper judgment.
 - iii. That the Appellant/Applicant seeks that stay orders be issued without a condition on deposit of security for the following reasons: That the Appellant is a public university maintained out of public funds. The Appellant is facing serious financial constraints in that it is not received its share of capitation from the government. Besides, the government has reduced fees payable by students which has had detrimental effects on the financial position of the University. That in the existing circumstances and financial position, the University is technically insolvent and cannot meet its financial obligations as and when this fall due. Order 42 Rule 8 of the Civil Procedure rules immunizes a public institution from issuing security as a condition for grant of stay orders. That this court issues orders for the Appellant to provide a bank guarantee in favour of the judiciary for half the decretal sum.



3. The Respondent opposes the application vide Replying Affidavit sworn on 19th January, 2026 and avers as follows;
 - i. That the application is a non-starter and abuse of the process of the court.
 - ii. That the Applicant has not advanced any valid reasons justifying stay of the judgment of court which was entered regularly after taking all other factors into account and applying the law.
 - iii. The deponent has not demonstrated that substantial loss would be occasioned in the absence of grant of stay and therefore this remains a mere allegation.
 - iv. The payment of gratuity in this case does not amount to substantial loss.
 - v. The application has not been brought in good faith and is a delay tactic.
 - vi. There is no offer of security therefore disintitling the Applicant from the orders sought.
 - vii. That this court should not only entertain the Applicant but also safeguard the Respondent's rights as he has waited for judgment since 30th June, 2020 when he retired.
 - viii. That it is unfair for the Applicant to continue active discrimination on payment of terminal dues when indeed other employees were paid at the rate of 31% upon retirement.
 - ix. That the Respondent is entitled to enjoy the fruits of judgment and decree.
 - x. That in the event this court finds merit in the application, half the decretal sum be released to the Respondent while the balance is deposited in a joint interest earning account in the name of the Advocates.
4. The Applicant couches the application with various tangible reasons as to why stay of execution of the judgment and decree of the trial court should issue in their favour. Besides stating their financial woes and therefore incapacity to meet the security as would be required in this application, the Applicant cites order 42 Rule 8 of the Civil Procedure Rules which provides that a public institution is not required to deposit security as a condition for grant of stay.
5. The Applicant in their written submissions dated 22nd January, 2026 further submits that the Respondent has not demonstrated ability to refund the decretal sum in the event of a success of the appeal. There is nothing on record to demonstrate that the Respondent has sufficient means of making good in the event the appeal succeeds. On this the Applicant seeks to rely on the authority of Cooperative Bank of Kenya vs Taramusi Francis Ongoki (2019) eKLR where the court upheld that in such circumstances, the Applicant's case takes sway.
6. The Respondent in their written submissions dated 26th January, 2026 submits that the Applicant's right to appeal must be balanced against the principle that a successful litigant should not be deprived of the fruits of judgment without reasonable cause. It is also their case that stay of execution is a discretionary remedy where the discretion is exercised judiciously and on terms that safeguard the decree holder.
7. It is the Respondent's further submission that on a confession that the University is on its knees financially mandates a situation that would be risky to the Respondent in the event of unconditional stay of execution. This would lead to a situation where the decree may be rendered illusory and difficult to realise in the event of no success in the appeal. This court is therefore urged to order security for the entire decretal sum as anything less would inadequately protect the Respondent and unfairly shift the risk of the Appellant/Applicant's financial instability onto the decree holder.



8. Alternatively, the Respondent is agreeable to the issuance of bank guarantee for the full decretal sum in her favour. This would restore and guarantee the Respondent's position to recover her gratuity should the appeal fail.
9. Taking cognisance of the provisions of Order 42 Rule 8 of the Civil Procedure Rules on the non-requirement of the deposits of guarantee for security by public institutions, this court exercises its discretion in favour of the application for stay. Inasmuch, the Applicant has offered the issue of bank guarantee for half the decretal sum as security in favour of the Respondent. I find this sustainable and uphold it.
10. I am therefore inclined to allow the application and order as follows;
 - i. The Applicant be and is hereby ordered to issue a bank guarantee for Ksh1,169,565.2 being half the decretal sum in 30 days.
 - ii. Each party shall bear their costs of this application.
 - iii. Mention on 18th May, 2026 for confirmation of compliance on the filing of a Record of Appeal.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Omondi for the Appellant/Applicant

Mr. Onenga instructed by OCO Law & Co. Advocates for the Respondent

