

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT ELDORET

APPEAL NO. E070 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

**(TEST CASE FOR APPLICATIONS IN APPEALS NO. E071,
E072, E073, E074, E075, E076, E077, E078, E081,
E082, E083, E084, E085, E086, E087, E088 AND E089
OF 2025)**

RAI PLYWOOD (K) LIMITED

APPELLANT

VERSUS

JAMES MBUTHIA..... RESPONDENT

RULING

1. The application before me for determination is dated 10th December 2025 and has been brought by the Appellant/Applicant under the provisions of section 12 of the Employment and Labour Relations Court Act, Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and all enabling provisions of law.
2. The Applicant seeks orders that:

- (i) Spent
 - (ii) That pending the hearing of this Application inter partes, this Honourable Court be pleased to grant a stay of execution of the judgment delivered on 13th November 2025 in Eldoret MCELRC Case No. E129 of 2024, James Mbutia v Rai Plywood(K)Limited and any consequential decree.
 - (iii) That this Honourable Court be pleased to stay execution of the whole Judgment in Eldoret MCELRC Case No. E129 of 2024, James Mbutia v Rai Plywood (K) Limited, pending the hearing and determination of the Appeal.
 - (iv) That the Honourable Court be pleased to grant such further or other orders as it may deem just and expedient in the circumstances of this case.
 - (v) That the costs of this Application do abide the outcome of the intended Appeal.
3. The application is supported by the affidavit of HENRY OKOYA, the Appellant's Human Resource and Administration Manager sworn on 10th December 2025.

4. The grounds upon which the application is anchored are contained at the foot of the application as reiterated and expounded in the supporting affidavit as follows: That on 13th November 2025, the Honourable Keyne Gweno electronically delivered judgment in Eldoret MCELRC Case No. E129 of 2024 awarding the Respondent the sum of Kshs 191,878.86 together with costs and interest; that the Respondent subsequently filed a certificate of costs dated 17th November 2025 in respect of the judgment delivered on 13th November 2025; that the trial court granted a 30 day stay of execution from the date of the judgment which lapsed on 13th December 2025; that the Applicant being dissatisfied with the judgment has filed a Memorandum of Appeal dated 1st December 2025 challenging the whole of the judgment and seeking to reserve it; that the Appellant has also filed a formal letter to the registrar requesting a certified copy of the judgment, proceedings and decree; that unless this Honourable Court urgently grants an interim stay pending determination of the Appeal, the Respondent remains at liberty to commence execution immediately after the lapse of stay period on 13th

December 2025; that execution prior to the hearing of this application would render the Appeal nugatory and frustrate the purpose of the Appellant seeking redress through the Appeal; that the Appellant has raised substantial and arguable questions of law and fact in the Memorandum of Appeal; that it is in the interest of justice that an interim, time bound stay be granted to protect the Appeal and preserve the status quo and that the application has been filed promptly and without undue delay.

5. The application is opposed by the Respondent, James Mbutia who filed a Replying Affidavit sworn on 2nd January, 2026. He deposes that the application is a non-starter, lacks merit, is misplaced, frivolous, mischievous and an abuse of the court process and should be struck out in *limine* with costs.
6. The Respondent avers that the application is only meant to derail this matter, waste judicial time and deny him the enjoyment of the fruits of judgment delivered on 13th November 2025.
7. He further avers that the Applicant has not advanced any valid reasons justifying a stay of the Honourable Court's judgment

which was entered regularly and after taking evidence, reviewing the filed documents and correctly applying the provisions in the Employment Act and the Labour Relations Act.

8. It is the Respondent's averment that apart from the allusions of substantial loss, the deponent has not demonstrated that substantial loss would be occasioned if stay is not granted, and as such, it remains mere allegations. That further, the Appellant has not met the conditions provided for under Order 42 Rule 6 of the Civil Procedure Rules, 2010 and no offer of security has been presented thus disentitling it from the orders sought.
9. The Respondent has opined that in the event the court is inclined to allow the application, then the court should order strict conditions for stay of execution to the effect that the entire decretal sum plus costs of the suit be deposited in a joint interest earning account in the names of both advocates on record.
10. In a rejoinder, the Appellant filed a supplementary affidavit sworn on 5th February 2026 by Henry Okola, its Human

Resource Manager. It is deposed that the Appellant stands to suffer substantial loss if the stay is not granted as the Respondent has not demonstrated any financial ability to refund the decretal sum with interest and costs which would render a successful appeal nugatory. The Appellant maintains that the Appellant has recently resumed a significant level of operations following the recent lifting of the prolonged logging ban imposed by the government in 2018, which severely affected the Applicant's core timber business, hence requiring the whole security in the circumstances would impose unnecessary hardships on the Applicant's business operations and recurrent expenditures.

11. The application was disposed of by way of written submissions. Both parties duly filed their submissions which I have considered.

Determination

12. From the application and the rival affidavits on record as well as the submissions of the parties, the only issue that presents

itself for this court's determination is whether or not the orders of stay of execution should issue.

13. The principles governing the grant of stay of execution pending appeal are well settled as set out under Order 42 Rule 6(2) of the Civil Procedure Rules. An Applicant must satisfy three key conditions, namely:
 - i. That the application has been brought without unreasonable delay
 - ii. That the applicant will suffer substantial loss unless the order is granted
 - iii. That the applicant has provided, or is willing to provide security for the due performance of the decree.
14. On the issue of delay, the judgment sought to be stayed was delivered on 13th November 2025, while the present application was filed on 10th December 2025. This was within the 30-day stay period granted by the trial court, which lapsed on 13th December 2025. In the circumstances, I am satisfied that the application was filed timeously and without unreasonable delay.

15. On whether the Applicant has demonstrated that it will suffer substantial loss, the Applicant contends that the Respondent has not demonstrated the ability to refund the decretal sum in the event the appeal succeeds. The Respondent, on the other hand, has not placed any material before this Court to demonstrate his financial capability.
16. It is trite that substantial loss is the cornerstone of an application for stay of execution. The burden lies on the Applicant to demonstrate that such loss is likely to occur. However, where the decretal sum is paid out and the Respondent's ability to refund is in doubt, the appeal may be rendered nugatory. In such circumstances, the Court is entitled to balance the competing interests of the parties.
17. The decretal sum for which the Respondent seeks to appeal against is Kshs. 191,878.86. The decretal sum is not inordinately large. However, in the absence of evidence of the Respondent's means to refund the same, and bearing in mind the Applicant's right of appeal, I am persuaded that the Applicant has demonstrated a likelihood of substantial loss.

18. On the issue of security, the law is clear that an applicant must furnish security for the due performance of the decree. While the Applicant has expressed concerns regarding its financial position and the hardship that may arise from depositing the entire decretal sum, it has nonetheless indicated willingness to comply with any reasonable conditions that may be imposed by the Court.
19. The purpose of security is not to punish an applicant but to safeguard the interests of the Respondent, who has a valid judgment in his favour. The Court must therefore strike a balance between the right of the Applicant to pursue the appeal and the Respondent's right to enjoy the fruits of his judgment.
20. In the circumstances, I find that this is a proper case for the grant of a conditional stay of execution.
21. In the result, the Notice of Motion dated 10th December 2025 is allowed on the following terms: -

- i. There shall be a stay of execution of the judgment delivered on 13th November 2025 in Eldoret MCELRC Case No. E129 of 2024, *James Mbutia v Rai Plywood (K) Limited*, pending the hearing and determination of the appeal.
 - ii. The stay is conditional upon the Applicant depositing the entire decretal sum in an interest-earning account in the joint names of the advocates for the parties within thirty (30) days from the date of this ruling or supplying other acceptable security such as a bank guarantee from a reputable Bank operating in Kenya within 30 days.
 - iii. In default of compliance with order (ii) above within the stipulated period, the stay shall automatically lapse.
 - iv. The costs of this application shall abide the outcome of the appeal.
22. The reasoning and findings in this ruling shall apply *mutatis mutandis* to the related applications in **Eldoret ELRC Appeals Nos. NO. E071, E072, E073, E074, E075, E076, E077, E078, E081, E082, E083, E084, E085, E086, E087, E088 and E089 OF 2025.**

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 30TH DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**