

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

(Before Hon. Lady Justice Monica Mbarũ)

APPEAL NO. E067 OF 2026

[Formerly Nairobi ELRCA No. E022 of 2026]

SIMON KIPRONO SANG..... APPELLANT

VERSUS

REGISTRAR OF TRADE UNIONS1ST RESPONDENT

SULMAN OTIENO OWUOR2ND RESPONDENT

RULING

The ruling herein relates to the appellant’s application dated 2 March 2026 and the 2nd respondent's Notice of Preliminary Objections dated 19 March 2026.

The application dated 2 March 2026 is premised on the provisions of Rule 44 and 45 of the Employment and Labour Relations Court (Procedure) Rules, sections 3 and 12 of the Employment and Labour Relations Court Act and Sections 30, 31, 34, 35 and 47 of the Labour Relations Act and seeking orders:

1. Spent.
2. Spent.

3. Pending the hearing and determination of this application or further orders of this court, the court may be pleased to stay or suspend the operation of the extract of the list of officials of the Dock Workers Union issued on 27 February 2026 from the changes in the registrar of trade union made on 27 February 2026, which removed the appellant as the general secretary of the Dock Workers Union.
4. Pending the hearing and determination of this application or further orders of the court, be pleased to issue an order of instruction to restrain the 2nd respondent from acting as the general secretary of the Dock Workers Union.
5. Pending the hearing of the appeal or further orders of the court, to be pleased to stay the Certificate of Changes and extract of the list of officials arising from the changes made by the Registrar of Trade Unions, both dated 27 February 2026, which removed the appellant as the general secretary of the Dock Workers Union.
6. Pending the hearing of the appeal or further orders of the court, it is pleased to issue an order for an injunction to restrain the 2nd respondent from acting as the general secretary of the Dock Workers Union.
7. The respondents to bear costs.

The application is supported by the appellant through his Affidavit and on the grounds that the court delivered judgment in Mombasa in ELRC Cause No.

E025 of 2025 on 26 February 2026. The appeal arises from the new changes that were not before the court when the 1st respondent amended the register of trade unions, removing the appellant as GS of the Dock Workers Union. Such matter was not in issue before the court in Mombasa ELRC E025 of 2025. The 1st respondent acted on the basis of a resolution of the Dock Workers Union from a meeting held on 27 February 2026, which was held at a distance of not less than 500km from Nairobi, yet changes were made on the same date as the alleged meeting.

Mr. Sang avers that there is a judgment in Mombasa ELRC E025 of 2025, and this appeal is a new cause of action.

The orders in the judgment delivered on 26 February 2026 did not call for the suspension of the appellant from office as Secretary General as contemplated under section 47(1) (b) of the Labour Relations Act (LRA). The removal from office was suo motto and not justified.

The ELRC, by article 165 of the constitution, lacked jurisdiction to sit as a criminal court to try the appellant and convict him of dishonesty as contemplated in section 31(5) of the LRA, thereby warranting the 1st respondent to move and remove him from office as Secretary General of the Dock Workers Union without notice.

The Dock Workers Union has not held elections for its officials. Under article 18(1) of the union constitution, such elections may be conducted only at a conference scheduled for 25 June 2026. Only then can the 1st respondent change the register pursuant to sections 34 and 35 of the LRA. The changes made by the 1st respondent have led to changes in the Dock Workers Union following a resolution attended or convened by the 2nd respondent. However, under Article 17(3), the appellant ought to have convened the meeting. The 2nd respondent moved without authority to convene a meeting; the resolution of such a meeting is bad in law and incapable of having the effect of a lawful decision.

Mr. Sang avers that if the resolution was made based on disciplinary matters, he did not know, and under article 12(k) of the union constitution, the NEC may only recommend its decision to remove its official form as a member, but the organ with the mandate for removal is either the Special Conference or Annual Conference convened under article 10 or 11 of the constitution. No reason was given for the appellant's removal as an official of the union.

Sang avers that he was sued in his personal capacity in Mombasa ELRC No. E025 of 2025. The claimants were aware that they had sued the appellant as the GS for alleged breach of fiduciary duty to the claimants, and he has filed an appeal. The decision of the 1st respondent s meant to drive him away from the seat of justice. If the orders sought are not granted, the appellant will suffer loss and damage.

In reply, the 2nd respondent filed Notice of Preliminary Objection on the following grounds:

1. There is no decision which has been made by the 1st respondent that can form the basis of an appeal. As such, the court has no jurisdiction to hear and determine this matter.
2. Notice of Motion dated 2 March 2026 offends the doctrine of res judicata in light of the decision rendered in Mombasa ELRC Cause No. E025 of 2025: Amin Iloti & others v Simon Kiprono Sang and others.
3. This court has no jurisdiction to sit on appeal against the decision made in Mombasa ELRC Cause No. E025 of 2026 Amin Iloti & others v Simon Kiprono Sang & others, which held that the appellant was unfit to hold the position of the General Secretary of the Dock Workers Union.

The 2nd respondent also filed the Replying Affidavit of Sulman Owuor, who avers that he was a claimant in Mombasa Cause No. E025 of 2025 and conversant with the facts herein. The contention by the appellant that the 1st respondent misinterpreted the judgment in Mombasa ELRC No. E025 of 2025 is not correct. The appellant has since filed an application dated 1 April 2026 seeking the interpretation of the judgment, and this appeal is an abuse of court process.

Owuor avers that the Dock Workers Union conducted elections on 4 April 2026 and elected new officials. Consequently, the application dated 2 March 2026,

where the appellant contends that he was irregularly removed from the register, has been rendered moot. If the application were allowed, it would have no effect, since the current registrar already bears the newly elected officials.

On the objection and application dated 2 March 2026, the parties filed a submission and highlighted these in court.

The issues which emerge for determination are two-fold. Whether the court should stay or suspend the certificate of changes made on 27 February 2026 pursuant to Form Q in respect of officials of the Dock Workers Union pending the hearing of the appeal, and whether the objection by the 2nd respondent has merit.

Determination

Starting with the 2nd respondent's objections, the case is that the court lacks jurisdiction because the 1st respondent has not yet made a decision, and the appellant is challenging the judgment in Mombasa ELRC Cause No. E025 of 2025, where he has since filed an appeal, and this appeal is an abuse of the court process.

The Memorandum of Appeal herein relates to:

To challenge the decision of the Registrar of Trade Unions, pursuant to section 30 of the Labour Relations Act.

Indeed, under section 30 of the LRA, a party dissatisfied with the decision of the Registrar of Trade Unions, the 1st respondent, may file an appeal with the court. At this stage, the court is not required to address the merits or demerits of the appeal. The compliance with section 30 of the LRA is sufficient.

30. Appeals against the decision of the Registrar

Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial [Employment and Labour Relations] Court against that decision within thirty days of the decision.

The objections by the 2nd respondent to this extent have no merit.

The appellant is seeking interim orders staying or suspending the decision of the 1st respondent and an injunction stopping the application and operation of such changes with regard to the change of officials of the Dock Workers Union.

The principles governing the stay of execution pending appeal are well settled in Kenyan jurisprudence. Under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant must demonstrate:

- (i) Substantial loss – that they will suffer irreparable harm if a stay is not granted;
- (ii) No undue delay – that the application was filed without unreasonable delay; and
- (iii) Security – that they are willing to provide security for the due performance of the decree.

The court in **Kalume v Mwanzwii & 6 others [2026] KEHC 4356 (KLR)** and **Halai & Another v Thornton & Turpin [1963] Ltd [1990] KLR 365**, the courts have emphasized that the primary consideration in an application seeking a stay of execution is whether the appeal will be rendered nugatory if execution proceeds.

Further, the foundation of order 42 rule 6 is that an applicant must demonstrate the substantial loss that would be suffered if a stay of execution is not granted. Substantial loss is the cornerstone of an application for stay. In **Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR)**, the court held that:

“If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money.”

The appellant contends that the changes to the Dock Workers Union officials’ registry were effected without notice or without a resolution by the relevant governance body. He argues a case that the respondents have moved without authority.

The 2nd respondent argues that elections were held on 4 April 2026, thereby rendering the appeal moot. The changes to the register have been effected; hence, there is nothing to stay execution.

As the applicant, there is no demonstration of what loss the appellant will suffer at this stage if the orders sought are not granted. The reliance on Mombasa Cause E025 of 2025 is immaterial in view of the fact that the appeal is premised under the provisions of section 30 of the LRA.

On whether to stay or suspend the Certificate of Changes made on 27 February 2026 pursuant to Form Q in respect of the officials of the Dock Workers Union, which removed the appellant as the GS, this is the gist and foundation of the appeal. Once addressed, such a matter will address the appeal. Addressing such matters as a preliminary issue will deny the court crucial evidence from the parties. It is imperative to hear the appeal on the merits.

The appeal will proceed and be heard on merit.

Accordingly, the objections by the 2nd respondent have no merit. The application dated 2 March 2026 has been declined. Costs shall abide the outcome of the appeal, which shall be heard on merit.

Delivered in open court at Nairobi, this 8th day of May 2026

**M. MBARŪ
JUDGE**

In the presence of:

Court Assistants: Catherine, Kemboi and Omar

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