

**IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: MURGOR, LAIBUTA & NGENYE,
JJ.A.) CIVIL APPLICATION NO. E067 OF 2025**

BETWEEN

**DOCK WORKERS UNION OF KENYA 1ST
APPLICANT SIMON KIPRONO SANG
2ND APPLICANT**

AND

**AMIN ILOTI 1ST
RESPONDENT SULMAN OWUOR
.....2ND RESPONDENT KIBIBI OMERI
..... 3RD RESPONDENT MASKAT
SALIM4TH RESPONDENT
MEJUMAA CHIRAU5TH RESPONDENT
RUWA MPATE6TH
RESPONDENT GLDYS MBITHI7TH
RESPONDENT ALI MWAMREZI
.....8TH RESPONDENT QUEEN
MSHIHIRI9TH RESPONDENT
MOHAMED SHAMAHUYA10TH
RESPONDENT MAURICE MWANYULE
.....11TH RESPONDENT
AUGUST RUWA12TH
RESPONDENT JUMA MAJEPO
.....13TH RESPONDENT KENNEDY
OKETCH14TH RESPONDENT EDWIN
WASONGA15TH RESPONDENT**

*(Being an application for stay of execution and proceedings
pending appeal against the Ruling and Orders of the Employment
and Labour Relations Court at Mombasa (Monica Mbaru, J.) dated
3rd July 2025*

in

E.L.R.C Cause No. E025 of 2025)

**RULING OF THE
COURT**

1. The 15 respondents, acting on their own behalf and on behalf of the 1st applicant (the Dock Workers Union of Kenya - the Union)

lodged a claim in the Employment and Labour Relations Court (the ELRC) at Mombasa against the 2nd applicant (Simon Kiprono Sang) and the Registrar of Trade Unions in ELRC Cause No. E025 of 2025, the particulars of which remain undisclosed in the scanty record as put to us.

2. Suffice it to observe that the respondents' claim was accompanied by a Notice of Motion dated 13th March 2025 seeking, *inter alia*, conservatory orders restraining the 2nd applicant from further use of any funds held on account of the 1st applicant, including taking of further loans; orders that the 2nd applicant do ensure that all necessary expenses are brought to the attention of the 2nd respondent at least seven (7) days in advance, and that the 2nd respondent be restrained from irresponsibly withholding approval of such expenses and be bound to keep vouching evidence of the receipt thereof for court assessment; a conservatory order to stay the decision of the 2nd applicant to suspend the respondents from their respective elected offices; and that costs of the application be provided for.

3. The respondents' Motion was supported by the annexed affidavit of Amin Iloti (the 1st respondent) sworn on 13th March 2025 essentially deposing to the grounds on which the Motion was made, namely: that the 2nd applicant, who is the 1st applicant's Secretary General, had breached the Union constitution by failing to file audited accounts for several years; that he had failed to maintain books of accounts; that he unreasonably incurred large and unexplained loans on the Union's account; and that he had blocked all attempts to hold the mandatory annual conference of the Union. The deponent further averred that, after the respondents questioned the Union's financial position and demanded an account, the 2nd applicant embarked on a campaign to remove them from office.

4. In response to the respondents' Motion, the 2nd applicant, on his own behalf and on behalf of the 2nd applicant, filed a replying affidavit, whose date of deposition is undisclosed in the record before us. Gathering from the impugned ruling, the deponent stated that the court lacked jurisdiction to hear the respondents' claim;

that the claim was filed without a proper memorandum of claim; that the respondents had no authority to act for the 1st applicant; that several of the respondents were not registered officials of the Union while others had already been suspended by the National Executive Committee with the approval of the Registrar of Trade Unions; and that the challenge of their removal was time barred as it was not filed within thirty (30) days of the Registrar's decision.

5. In addition to the foregoing, the 2nd applicant denied the allegations of financial impropriety and stated that the Union was facing serious financial distress.

6. In its ruling dated 3rd July 2025, the ELRC (Monica Mbaru, J.) granted the respondents, *inter alia*: conservatory orders pending determination of their claim; and orders restraining the 2nd applicant from using any funds of the 2nd applicant, including taking of additional loans, unless allowed to incur necessary expenses for the Union's operations, and subject to approval of such expenses by the 2nd and 3rd respondents (Selman Owuor and

Kibibi Omeri, the Assistant General Secretary and the National Treasurer of the Union respectively).

7. Aggrieved by the learned Judge's decision, the applicants moved to this Court on appeal on the grounds set out in their Notice of Motion dated 25th July 2025 faulting the learned Judge for, *inter alia*: issuing a decision that was against public policy; failing to interrogate the provisions of section 42 of the Labour Relations Act; failing to interrogate and interpret the evidence, which did not establish the respondents' claim; and for failing to appreciate that the 2nd applicant could not have withdrawn funds from the 1st applicant's accounts without the signatures of the 1st to 4th respondents.

8. In their Motion aforesaid filed pursuant to rule 5(2) (b) of the Court of Appeal Rules, 2022 the applicants seek stay of execution of the impugned orders as well as stay of proceedings in the ELRC pending hearing and determination of their intended appeal. They also prayed for costs of their application.

9. The applicants' Motion is supported by the 2nd applicant's affidavit sworn on 25th July 2025, a supplementary affidavit sworn on 16th September 2025 and a further affidavit sworn on 28th November 2025 in which he essentially deposes to the grounds on which the Motion and their intended appeal are founded, as well as the basis on which they oppose the respondents' claim in the ELRC.

10. It is also noteworthy that the applicants' Motion is founded on a whopping 25 grounds, most of which are needlessly argumentative, and which delve on what they consider to be the merits of their response to the respondents' undetermined claim, as well as the perceived merits of their intended appeal. With all due respect, those are arenas to which we cannot descend in determination of their Motion under rule 5(2) (b) of this Court's Rules.

11. However, relevant to the Motion before us, the applicants contend: that the applicant has an arguable appeal; and that

their

intended appeal (if successful) would be rendered nugatory if the orders sought are not granted. According to the applicants, the impugned decision has caused paralysis in the operations of the 1st applicant; and that, unless stay is granted, the 1st applicant's operations will be halted and result in irreparable damage to the 1st applicant.

12. In support of their Motion, the 1st applicant filed written submissions dated 20th September 2025 and a list of authorities and case digest dated 25th September 2025 citing 6 judicial authorities, two of which are relevant to applications made pursuant to rule 5(2) (b), namely: **Makena v Nalwa** [2024] KEHC

13086 (KLR) for the proposition that stay of proceedings is a drastic action which requires the party seeking such orders to prove that it is necessary; and the reasons why it cannot be granted by the trial court in cases where it stands to delay the proceedings at the trial court; and **KETRACO v Instalanciones Inabelsa S.A** [2022] KESC

64 (KLR), highlighting the twin principles that are require to be

satisfied to merit grant of orders in an application under rule 5(2) (b).

13. Opposing the applicants' Motion, The 2nd respondent filed a replying affidavit sworn on 24th September 2025 contending, among other things: that granting the orders sought would be tantamount to allowing the 2nd applicant to take more loans thereby creating more hardship for the 1st applicant; and that the applicants' Motion purports to litigate over issues not raised before the trial court.

14. In their written submissions dated 24th September 2025, counsel for the respondents, M/s. Mutisya Mwanzia & Ondeng, cited no authorities, but contended that there is nothing to demonstrate that the applicants have an arguable appeal; and that the orders complained of are preservatory in nature and meant to safeguard the 1st applicant's funds from misuse. According to counsel, no issue was ever raised before the trial court to demonstrate that the respondents had unreasonably withheld consent in breach of the trial court's orders and

directions; and that

the applicants have not demonstrated that, if the orders sought are not granted, their intended appeal, if successful, would be rendered nugatory. Counsel urged us to dismiss the applicants' Motion with costs.

15. As this Court pronounced itself time and again, for an applicant to merit stay orders pursuant to rule 5(2) (b) of the Court of Appeal Rules pending appeal, he or she must demonstrate to the satisfaction of the Court that he or she has an arguable appeal; and that the appeal (or intended appeal as the case may be), if successful, would be rendered nugatory absent stay. The two requirements constitute what is commonly referred to as the twin principles that must be satisfied before such orders can avail (see **Anne Wanjiku Kibeh vs. Clement Kungu Waibara and IEBC** [2020] eKLR; and **Yellow Horse Inns Limited vs. A. A. Kawir Transporters & 4 Others** [2014] eKLR).

16. A cursory look at the grounds of appeal disclosed on the face of the applicant's Motion and supporting affidavit reveals numerous issues of law and fact deserving of the Court's

inquiry on appeal.

Moreover, and as this Court has often stated, even one bona fide ground of appeal is adequate to satisfy the first limb of the twin principle. The case of **University of Nairobi vs. Ricatti Business of East Africa** [2020] eKLR is a case in point.

17. On the issue as to whether this Court's discretionary power to stay proceedings in the ELRC pending the intended appeal is merited, we take to mind that it is a discretionary power exercisable by the Court upon consideration of the facts and circumstances of each case. As stated by this Court in **David Morton Silverstein vs. Atsango Chesoni** [2002] eKLR -

“The Court is not laying down any principle that no order for stay of proceedings will ever be made; that would be contrary to the provisions of rule 5 (2) (b) of the Court's own rules. But as the court pointed out in the case we have already cited, each case must depend on its own facts”

18. The High Court at Meru in **Kenya Wildlife Service vs. James Mutembei** [2019] eKLR, Gikonyo J correctly held that:

“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”

19. Halsbury’s Laws of England, 4th Edition. Vol. 37 has this to say at p.330 and p.332:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.

... ..

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

... ..

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.

20. In our considered view, we find nothing to suggest that the proceedings sought to be stayed pending the applicants' intended interlocutory appeal are frivolous, vexatious or harassing, or manifestly groundless. Neither is the respondents' claim in the ELRC one that raises no cause of action in law or in equity to warrant stay pending appeal. Gathering from the scanty record before us, the applicants seek to challenge the

respondents' case for accountability, proper financial administration and the alleged excesses of the 2nd applicant. No doubt, the impugned interlocutory orders were intended to facilitate the 1st applicant's smooth financial administration pending determination of the respondents' substantive claim and the intended appeal. Those orders facilitate an administrative framework that does not prejudice any of the parties concerned.

21. Turning to the second limb of the twin principle, the term "nugatory" was defined in **Reliance Bank Ltd vs. Norlake Investments Ltd** [2002] 1 EA p.227 at p.232 as "worthless, futile or invalid". It also means "trifling". Having concluded that the applicant's intended appeal is arguable, the remaining question is whether the intended appeal, if successful, would be rendered nugatory if the stay orders sought were not granted. We are not so persuaded.

22. Having found that the impugned orders are suitably designed to facilitate accountability in the 1st applicant's governance and financial administration pending appeal, and

that stay of

proceedings in the ELRC would serve no useful purpose, we find that the applicants have failed to satisfy the twin principle for grant of the orders sought pursuant to rule 5(2) (b) of this Court's Rules. Consequently, the Notice of Motion dated 25th July 2025 fails and is hereby dismissed with costs to the respondents. Orders accordingly.

Dated and delivered at Mombasa this 15th day of May, 2026.

A. K. MURGOR

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA CArb, FCIArb.

.....

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed
DEPUTY REGISTRAR