

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS

ELRC PETITION NO. E004 OF 2025

DAVID MALOME & 172 OTHERS.....PETITIONERS

VERSUS

ASSOCIATED BATTERY MANUFACTURERS (EA) LTD.....RESPONDENT

AND

DIRECTORATE OF OCCUPATIONAL

SAFETY AND HEALTH SERVICESINTERESTED PARTY

CORAM

Before Lady Justice Jemimah Keli

C/A Otieno

RULING

1. The court on the 17th December 2025, on an application challenging its jurisdiction by the applicant and intended appellant, held it had jurisdiction. The applicant was dissatisfied with the decision and filed Notice of Appeal and the instant application by way of Notice of Motion dated 14th January 2026 brought under Section 12(3)(viii) of the Employment and Labour Relations Court Act, 2011, Rule 45(1) and 47 of the Employment and Labour Relations (Procedure) Rules 2024, Order 42 Rule 6 of the Civil Procedure Rules 2010, and all enabling provisions of law seeking for the following orders-

- a. Spent
- b. THAT pending the hearing and determination of this application inter partes, this Honourable Court be pleased to grant an interim order to stay any further proceedings in this matter.
- c. THAT pending the hearing and determination of the intended appeal against the Ruling and Orders delivered on 17th December 2025, this Honourable Court be pleased to grant an order for stay of proceedings of the Petition herein.
- d. THAT the costs of and incidental to this application be in the cause.

Grounds of the application

2. The Petitioners/ Respondents filed a Petition dated 2 May 2025. The Applicant filed an application dated 24 July 2025 seeking to strike out the Petition on inter alia grounds that this Court lacks jurisdiction to hear and determine the Petition.
3. On 17 December 2025, this Court delivered a Ruling dismissing the Applicant's Notice of Motion dated 24 July 2025. Immediately following the delivery of the Ruling, the Court directed that the matter be mentioned on 16 January 2026 to issue directions for the hearing of the Petition. The Applicant is dissatisfied with the Ruling, intends to appeal against the same and has lodged its Notice of Appeal dated 9 January 2026.
4. The Applicant has strong grounds of appeal touching on the very critical matter of the Court's jurisdiction to hear and determine the Petition. The Applicant is quite apprehensive that the proceedings before this Honourable Court will progress substantively before its intended

appeal is heard and determined by the Court of Appeal. If the Applicant is successful in the intended appeal before the Court of Appeal, any further proceedings, orders or judgment, that may be passed by this Court would amount to a nullity.

5. The Applicant's intended appeal before the Court of Appeal will be rendered academic and nugatory if the orders sought herein are not granted. It is in the interest of justice in the circumstances of this matter the Application herein urgently and the orders sought herein be granted. The Application herein has been made without undue delay.
6. The Petitioners opposed the application by way of Grounds of Opposition dated 14th February 2026.
7. The court directed that the application be canvassed by way of written submissions. The petitioners relied on their filed grounds of opposition. The respondent submitted as follows- That an order of stay of proceedings is a drastic, serious remedy which fundamentally interferes with a party's right to access justice and have their dispute determined without delay. For the very reason that it invariably stops the natural progression of a legal matter, such an order must be issued sparingly and only in special circumstances. The court in Global Tours & Travel Limited – Winding Up Cause No. 43 of 2000, in considering an application for stay of proceedings, held as follows:- “...I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice.....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of

granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.....” The court in that case proceeded to observe that a stay of proceedings can only be granted where grave injustice will be occasioned should the matter proceed, or where justice might not by other means be attained. Similarly, in Ndura v Kenya Power and Lighting Company, the Court emphasized that stay of proceedings should only be granted in exceptional circumstances where sufficient cause is demonstrated. The Applicant must therefore demonstrate: 1. That the intended appeal is arguable; 2. That the application has been brought without unreasonable delay; 3. That substantial prejudice or loss will be suffered if stay is not granted; and 4. That the interests of justice favour grant of stay. The Respondent has failed to satisfy these principles.

That the respondent has not demonstrated any substantial loss or prejudice- The Respondent has not shown what substantial loss it stands to suffer if the Petition proceeds to hearing and determination. It is trite law that mere filing of an appeal or intention to appeal does not automatically entitle a party to stay of proceedings. That the right of appeal remains fully preserved even if the Petition proceeds to conclusion. Should the Respondent be dissatisfied with the final decision of this Honourable Court, it retains its right to appeal. The same has not been extinguished in any way. On the contrary, it is the Petitioners — who are 173 former employees — who stand to suffer grave prejudice through continued delay, particularly as the Petition concerns enforcement of constitutional and statutory labour rights. Justice delayed is justice denied. We rely on Article 159(2)(b) of the Constitution which mandates that justice shall not be delayed. Similarly, Article 50 guarantees the right to a fair hearing within a

reasonable time. Granting stay in the present circumstances would offend these constitutional principles and undermine the Petitioners' right to access justice. This is particularly so in labour matters where livelihood and dignity are implicated, and especially considering this case in which the effects of the Respondent's violation of constitutional guarantees and protections continue to be felt/experienced by the Petitioners. The Application is an indirect attempt to re-litigate jurisdiction. The Respondent previously challenged the jurisdiction of this Honourable Court. That challenge was dismissed, thereby affirming this Court's jurisdiction. It is apparent that the present Application is a veiled attempt to reopen or circumvent that determination. Courts have consistently held that parties should not use stay applications as a backdoor mechanism to delay proceedings after failing on jurisdictional objections. This Honourable Court, having already pronounced itself on jurisdiction, should not permit the Respondent to stall proceedings through procedural maneuvering. No exceptional circumstances have been demonstrated - an order of stay of proceedings is not granted as a matter of course. The Respondent has not demonstrated any exceptional circumstance; any arguable appeal with high chances of success or any irreparable harm that cannot be remedied by appeal at the conclusion/determination of the Petition. The said application therefore fails the legal threshold. Balance of convenience and interests of justice - we wish to submit that the balance of convenience in this case lies in favor of proceeding with the hearing of the case. The court in *Ndura (supra)* proceeded to state that the granting stay orders must be considered based on the totality of the facts of a case. It relied on *Christopher Ndolo Mutuku v CFC Stanbic Bank* in which the court stated thus:- "...what matters in an application for a stay of proceedings pending appeal is the overall impression the court makes and if the total sum of the circumstance of each case, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice." The balance of convenience tilts heavily in favour

of allowing the Petition to proceed. This Petition involves 173 Petitioners seeking enforcement of constitutional and statutory rights. Delaying the matter would occasion substantial prejudice to them while conferring no corresponding benefit to the Respondent. The interests of justice favour continuation and expeditious hearing of the Petition on its merits.

Decision

8. The impugned decision was on the jurisdiction of the court to hear and determine the pending petition. The applicant filed a notice of appeal dated 9th January 2026, which is annexed to the supporting affidavit by Emma Ndiga. The applicant further annexed a draft memorandum of appeal which in a nutshell challenges the finding on jurisdiction by the court. I upheld to apply in the instant case decision cited by the respondent in Ndura & another v Kenya Power and Lighting Company Limited [2025] KEELC 91 (KLR) where the Nzili, J. expounded on stay of proceedings as follows-‘To stay or not stay proceedings is a discretion on the part of the court to be exercised judicially and on sound grounds. It is a serious, grave and fundamental interruption in the right of parties to be heard expeditiously. In William Odhiambo Ramogi & Others v A.G. & Other, Muslim for Human Rights and Others (IP) [2020] eKLR, the court RE Global Tours & Travel Ltd (Supra) and Kenya Shell Ltd v Kibiru & Another [1986] eKLR and David Morton Silverstein v Atsango Chesoni (Supra) that the principles to consider are:’(1)If there is a pending appeal in the higher court.(2)The Applicant should explain why a stay has not been sought in the higher court since the policy is to move to the said court, which is better placed to calibrate its orders.(3)There must be a demonstration that the appeal raises substantial questions to be determined or is otherwise arguable.(4)There must be a demonstration of the appeal being rendered nugatory.(5)Exceptional circumstances must be demonstrated which make the stay of proceedings warranted as opposed to hearing the

case concluded safely and all arising grievances taken up on a single appeal.(6)The Applicant must demonstrate that the application was filed expeditiously and without delay’’ I find the grounds of appeal raise triable issues. The court agreed that its jurisdiction is a fundamental issue, and that if the Court of Appeal decides it in the negative, any further proceedings in the petition would be superfluous. In Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR) where the Court of Appeal observed that: -

‘If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory.

.... It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458:..’ Though the cause was on a stay of execution, I find the pronouncement in the decision applicable to stay of proceedings.

9. The court finds that any further proceedings in the matter would render the intended appeal nugatory in the event the appeal is successful. The court's impugned decision was delivered on the 17th December 2025, and the instant application was filed on 9th January 2026. There was no inordinate delay. I find it is in the interest of justice to allow the application for stay of proceedings pending the hearing and determination of the intended appeal on condition that the memorandum of appeal is filed and served within 30 days. The hearing and determination of the petition is thus held in abeyance pending decision of the Court of Appeal.

10. Mention on the 5th June 2026 to confirm status of the appeal.

11. Costs to the respondent in the cause.

12. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 8TH MAY,
2026.

JEMIMAH KELI,

JUDGE.

IN THE PRESENCE OF

C/A -Otieno

Applicants – absent

Petitioners- Ms Ouko