



**Romollas Limited v Mwashuma (Civil Appeal (Application)
E126 of 2024) [2025] KECA 53 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 53 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E126 OF 2024
AK MURGOR, KI LAIBUTA & GV ODUNGA, JJA
JANUARY 24, 2025**

BETWEEN

ROMOLLAS LIMITED APPLICANT

AND

RACHEAL MKAWUHANGA MWASHUMA RESPONDENT

(Being an appeal from the Ruling and orders of the Employment and Labour Relations Court at Mombasa (M. K. Nzei, J.) delivered on 20th June 2024 in ELRC Case No. E137 of 2023)

RULING

1. Romollas Limited, the applicant has brought the Notice of Motion dated 28th June 2024 pursuant to rule 5(2) (b) of the [Court of Appeal Rules, 2022](#) and section 3A and 3B of the [Appellate Jurisdiction Act](#) seeking, *inter alia*, stay of execution of the Judgment entered in the Chief Magistrate Court Employment and Labour Cause No. E344 of 2022 pending hearing and determination of the appeal, and an order that the costs of the application be provided for.
2. The applicants' Motion is brought on the grounds that, on 20th June 2024, the Employment and Labour Relations Court dismissed the appellants'/applicants' applications dated 27th December 2023 and 30th January 2024 which triggered the filing of this appeal; that the applicant had been granted interim orders of stay on condition that the decretal amount be deposited in court within 14 days from 28th December 2023; that the applicant was unable to comply with the court order since it was directed by the court officials to have the two conflicting decrees issued ascertained by the trial to establish the correct one; that, on 29th January 2024, the court declined to extend the interim orders of stay citing disobedience of court orders despite having been given the reasons for failure to comply, as a result of which the applicant filed an application dated 30th January 2024.
3. The applicant contended that, unless the orders sought are granted, it will render this appeal as well as the appeal in the Employment and Labour Court nugatory; that the applicant will suffer severe



prejudice if the orders sought are not granted as the respondent had already commenced execution, and that there will be no way of recovering the decretal amount in the likely event that the applicant succeeds in the appeals; that no prejudice will be occasioned to the respondent as the applicant is ready to deposit the decretal amount in court; that the applicant has already filed the record of appeal in this appeal as well as in the Employment and Labour Relations Court.

4. The application is supported by the affidavit of Mustafa Kassamji, a Director of the applicant, in which he reiterates the grounds on the face of the application and further deposes that the orders sought in the application ought to be granted for the reasons that: the application dated 27th December 2023 sought a stay of execution pending the hearing and determination of the appeal. Interim orders of stay were granted on 28th December 2023 on condition that the Appellant deposits the decretal amount in court within 14 days; at the time he approached the registry staff to enable them to raise an invoice for the decretal amount they and realised that there were two conflicting decrees in existence in the trial court file; that upon the registry officials noticing that there were two conflicting decrees, they verbally notified them to let the court ascertain which decree was correct before they could raise the invoice; and that, before the trial court could ascertain which decree was correct, the 14 days granted lapsed. The applicant's application for stay came up for mention on 29th January 2024 before the learned Judge. Despite having been notified of their predicament, the court stated that the applicant had disobeyed the court order and denied extension of the interim orders; that, without any delay they filed an application the following day on 30.1.2024 seeking stay and an order requesting the court to ascertain which decree was correct; that, in the application of 30th January 2024, they were able to show that the applicant had enough credit balance to deposit the decretal amount; that the judge still went ahead to dismiss their application; that the appeal at the Employment and Labour Relations Court has overwhelming chances of success as the colossal award of Kshs. 2,000,000 awarded to the respondent by the trial court was awarded without jurisdiction; that, unless the orders sought are granted, the applicant shall suffer irreparable loss and damage as there will be no way of recovering the decretal amount from the respondent in the very likely event the appellant succeeds in the appeal.
5. Annexed to the application is a Memorandum of Appeal raising the following grounds of appeal, but no Notice of Appeal was annexed.
6. In the Memorandum of appeal, the applicant complained amongst other grounds: that the learned Judge was in error in law and in fact in failing to consider that there existed two conflicting decrees dated 20th December 2023 and 24th January 2024 issued by the trial court; in holding that the applicant disobeyed court orders while there was no fault on its part; in failing to consider that the applicant had filed the appeal without any inordinate delay.
7. In a replying affidavit sworn on 8th July 2024, Racheal Mkawughanga Mwashuma, the respondent deposed that: on or about 16th November, 2023 the Chief Magistrates' Court at Mombasa delivered a judgment in her favor and, thereafter, a decree was issued on 20th December 2023; upon service of the decree on the applicant, it proceeded to file a Notice of Motion dated 27th December 2023 seeking stay of execution of the decree on 27th December 2023; on 28th December 2023, the Environment and Land Court issued orders to the effect that "there will be an interim stay of execution of the Court's decree in Mombasa CMELRC Case No. E344 of 2022 on conditions that the applicant deposits the entire decretal sum in the Employment and Labour Relations Court within 14 days; and that the applicant failed to comply with the court's order within the timelines stipulated and, instead, embarked on filing another decree dated 24th January 2024.
8. It was further deposed that there were no errors on the face of the decree issued on 20th December, 2023 and that, what the applicant ought to have done was to seek extension of time to deposit the



decretal amount, which it failed to do; that, once the Employment and Labour Relations Court was seized of the matter and pronounced itself, the Chief Magistrate's Court had no jurisdiction to issue the subsequent decree; that, nevertheless, upon being seized of the subsequent decree of 24th January, 2024 the applicant ought to have deposited the decretal sum and explained to the Employment and Labour Relations Court why it deposited a lesser amount than that stated in the decree of 23rd December 2023; and that it was indolent by failing to deposit any of the sums specified in the decrees.

9. The respondent further deponed that the applicant's Notice of Motion dated 28th June, 2024 is incompetent as it contravenes the provisions of section 3(1) of the *Appellate Jurisdiction Act*. By a Notice of preliminary objection dated 9th July 2024, the respondent opposed the application for the reason that this Court did not have jurisdiction to grant the orders sought.
10. In their written submissions, learned counsel for the applicant, Ms. Ombat largely reiterated the grounds of the motion and added that the applicant would suffer irreparable loss and damage if stay is not granted as the respondent will proceed with execution and, if paid, the applicant will have no means of recovering their money even if the appeal succeeded.
11. On their part, learned counsel for the respondent, Ms. Memia, also reiterated the contents in the replying affidavit, but went on to submit that, with respect to the preliminary objection, the Notice of motion offends section 3(1) of the *Appellate Jurisdiction Act*, as the orders sought were "a stay of execution of the Judgment entered in the Chief Magistrate's Court in MCELRC No. 344 of 2022 pending the appeal to this Court and the appeal from the Subordinate Court. In this regard, it was asserted that section 79G of the *Civil Procedure Act* specifies that appeals from the magistrates' court lie to the High Court and other courts, and not to this Court, so that this Court has no jurisdiction to grant the orders sought.
12. We have considered the applicant's motion, the respondent's replying affidavit and the parties' submissions. What becomes clear from the orders sought in the motion is that, indeed, the applicant is seeking orders of stay of execution of the Judgment entered in the Chief Magistrates Court, Employment and Labour Relations Cause No. E344 of 2022 pending hearing and determination of the appeal herein. In other words, what the applicant is seeking is to have this Court bypass the 1st appellate court, overreach into the trial magistrate's court, and to stay that decision. The question that begs at this juncture is whether we have jurisdiction to grant an order to stay the decision of the trial magistrates' court.
13. As stated in the *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] eKLR:

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."



14. Our mandate as set out in Article 164 of the *Constitution* is to hear and determine appeals from the High Court and the courts of equal status, which in this case is the Employment and Labour Relations Court. Pursuant to the provisions of the *Constitution* , section 3 of the *Appellate Jurisdiction Act* stipulates that this Court shall have jurisdiction to hear and determine appeals from the High Court and any other court or tribunal as prescribed by an Act of Parliament.
15. Section 65 of the *Civil Procedure Act* further stipulates that appeals from any original decree or part of a decree of a subordinate court on a question of law or fact lies to the High Court or courts of equal status.
16. In this application, pursuant to the decrees issued by the trial magistrates' court, the applicant is praying that we stay the orders of the Chief Magistrates' court. But given the edicts set out in the afore-cited provisions, we find that have no jurisdiction to determine the application premised on the orders sought and therefore decline the invitation to entertain the motion. Consequently, the application is struck out for incompetence and for want of jurisdiction with costs to the respondent.
17. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2024.

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA CARb, FCIArb.

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

