



REPUBLIC OF KENYA



**KENYA LAW**  
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**Master Fabricators Limited v Nyamoko & 11 others (Civil Application  
E326 of 2024) [2025] KECA 307 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 307 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E326 OF 2024  
SG KAIRU, AO MUCHELULE & WK KORIR, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**MASTER FABRICATORS LIMITED ..... APPLICANT**

**AND**

**DOUGLAS NYAMOKO ..... 1<sup>ST</sup> RESPONDENT**

**ELLY OTWOMA KOMBO ..... 2<sup>ND</sup> RESPONDENT**

**AUGUSTUS MUSILI MWANZIA ..... 3<sup>RD</sup> RESPONDENT**

**CONSTANT OWINO ..... 4<sup>TH</sup> RESPONDENT**

**PATRICK KILANGO ..... 5<sup>TH</sup> RESPONDENT**

**DUNCAN ODEYO ..... 6<sup>TH</sup> RESPONDENT**

**PAUL NYAMOKO ..... 7<sup>TH</sup> RESPONDENT**

**NICODEMUS NZOMO ..... 8<sup>TH</sup> RESPONDENT**

**LAWRENCE WERE ..... 9<sup>TH</sup> RESPONDENT**

**JOMO MUSELE ..... 10<sup>TH</sup> RESPONDENT**

**STEPHEN MULINGE ..... 11<sup>TH</sup> RESPONDENT**

**MUTANGILI NZIU ..... 12<sup>TH</sup> RESPONDENT**

*(An application for stay of execution pending appeal of the Judgment and Decree of the Employment and Labour Relations Court at Nairobi (Matthew Nderi Nduma, J.) dated 13th June 2024 in ELRC Case No. E137 of 2022)*



## RULING

1. In Milimani MCELRC/E770/2020, the respondents, Douglas Nyamoko, Elly Otwoma Kombo, Augustus Musili Mwanzia, Constant Owino, Patrick Kilango, Duncan Odeyo, Paul Nyamoko, Nicodemus Nzomo, Lawrence Were, Jomo Musele, Stephen Mulinge and Mutangili Nziu, sued the applicant, Master Fabricators Limited, claiming that the latter had unfairly terminated their contracts of employment and not paid their terminal dues. The dispute was determined in favour of the respondents. The applicant was dissatisfied with the decision, but his appeal to the Employment and Labour Relations Court (Mathews Nderi Nduma, J.), was dismissed on 6<sup>th</sup> June 2024. A notice of appeal was filed to challenge the dismissal. The total sum to be paid by the applicant to the respondents was about Kshs.10,000,000.
2. The applicant challenges the decision of the Employment and Labour Relations Court (ELRC) on the grounds that it was against the weight of evidence; the respondents were not employees but were independent contractors; and that the contracts herein were contracts of service and not contracts for service.
3. In the notice of motion dated 1<sup>st</sup> July 2024, pursuant to Rule 5(2)(b) of the Court of Appeal Rules, 2022, the applicant seeks the 'stay of execution of the whole Judgment/Decree of the Honourable Justice Matthew Nderi Nduma..... pending the hearing and determination of the intended appeal'.
4. In the supporting affidavit by Dharminder Singh Virdee, Managing Director, the applicant deponed that it had an arguable appeal, and that, if stay is not granted, it will suffer substantial loss given the amount sought to be recovered; the fact that such amount would not be recoverable from the respondents; and that the financial situation of the applicant is dire given the obtaining economic conditions, including the Covid-19 situation.
5. The 1<sup>st</sup> respondent swore a replying affidavit, on his behalf and on behalf of the rest of the respondents, to oppose the application. He supported the determination by the superior court, and denied that the applicant had an arguable case or that it had shown that it would suffer substantial or any loss if the application was not allowed. In particular, it was deponed that the superior court had issued a negative order that was incapable of attracting a stay order.
6. When the application came before us for hearing, neither counsel was on the platform. Each counsel had, however, filed written submissions which we have considered.
7. We must agree with the respondents that the judgment/decree of the superior court was in the nature of refrain from doing anything. The order was incapable of execution, except in regard to costs. This Court has variously held that a stay order cannot be issued in respect of such an order. (See for instance, Executive Estates Limited vs Kenya Posts & Another [2005] 1 EA 53; Charles Gichina Mwangi vs Henry Mukora Mwangi [2000] eKLR; Western College of Arts & Applied Sciences vs Oranga & Others [1976] KLR 63).
8. That being the case, we find the application not merited, and dismiss it with costs.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025.**

**S. GATEMBU KAIRU, FCIArb.**

.....

**JUDGE OF APPEAL**



**A. O. MUCHELULE**

.....

**JUDGE OF APPEAL**

**W. KORIR**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

