



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kerio Valley Development Authority v Ruto (Civil Appeal (Application)  
E012 of 2025) [2025] KECA 858 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KECA 858 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPEAL (APPLICATION) E012 OF 2025  
JM MATIVO, PM GACHOKA & WK KORIR, JJA  
MAY 16, 2025**

**BETWEEN**

**KERIO VALLEY DEVELOPMENT AUTHORITY ..... APPLICANT**

**AND**

**MARTIN KIPKORIR RUTO ..... RESPONDENT**

*(Being an application for stay of execution of the judgment/decree of the Employment and Labour Relations Court of Kenya at Eldoret (M. Onyango, J.) dated partly on 20th day of September 2024 and finally on 5th December 2024 in ELRC No. E018 of 2022)*

**RULING**

1. A concise history of the litigation before the Eldoret Chief Magistrate's Employment and Labour Relations Court and the Eldoret Employment and Labour Relations Court (the ELRC) is necessary in order to contextualize the application dated 10<sup>th</sup> February 2025, the subject of this ruling. Briefly, the respondent was employed by the appellant as a Senior Driver on 1<sup>st</sup> November 1988 until February 2018, when the appellant gave him an offer to voluntarily retire early. The offer was accompanied by a document detailing the Voluntary Early Retirement (V.E.R) criteria and package. Under the said package, the severance pay as calculated was Kshs.765,183.94. The applicant accepted the said offer.
2. However, this offer was rejected by Kenya Plantation and Agricultural Workers Union, which sued the appellant in Nakuru ELRC No. 68 of 2018. On 8<sup>th</sup> June 2018, the said suit was compromised by consent of the parties thereby altering the terms of the initial offer issued to the respondent on 16<sup>th</sup> February, 2018 even though the respondent was not a member of the Union. It was the appellant's case that the Collective Bargaining Agreement which altered the offer applied to all its employees, including the respondent. As per the alteration, the offer to the respondent was reviewed to Kshs.235,287.94.
3. Aggrieved by the alteration of the initial offer, the respondent sued the appellant in Eldoret Chief Magistrate's Employment and Labour Relations Court Cause No. 41 of 2019, Martin Kipkorir Ruto



vs. Kerio Valley Development Authority seeking to be paid severance package as per the appellant's initial offer on voluntary early retirement. After hearing the parties, the trial court delivered its judgment on 23<sup>rd</sup> March 2022 in favour of the respondent and awarded him Kshs.511,895.57.

4. Aggrieved by the said decision, the appellant appealed in Eldoret ELRC Appeal No. E018 of 2022, Kerio Valley Development Authority vs. Martin Kipkorir Ruto vide memorandum of appeal dated 30<sup>th</sup> March 2022 seeking to set aside the said Judgment on grounds inter-alia, that: the learned magistrate erred in law and in fact in finding that the respondent was not bound by the consent order. By a judgment delivered partly on 20<sup>th</sup> September 2024 and finally on 5<sup>th</sup> December 2024, Onyango, J. upheld the subordinate court's judgment.
5. The applicant is now before this Court seeking to stay execution of the said judgment pending the hearing and determination of its intended appeal against the said decision. The application is brought under Sections 3A and 3B of the [Appellate Jurisdiction Act](#) and Rules 1, 5 (2) (b), 41 & 47 of the Court of Appeal Rules, 2022. The application is supported by grounds listed on the face of the application and the annexed supporting affidavit sworn on 10<sup>th</sup> February 2025 by Getrude Mabele, the applicant's legal officer, together with the annexures thereto. Essentially, the grounds in support of the application are: that the intended appeal raises arguable issues of law and facts as demonstrated by the nine (9) grounds contained in the annexed draft memorandum of appeal dated 10<sup>th</sup> February, 2025.
6. On the nugatory aspect, the applicant averred that there is a danger that the intended appeal would be rendered nugatory once the respondent executes the decree against the applicant since the applicant is apprehensive that it will not be able to recover any money paid to the respondent in satisfaction of the decree at all or without considerable difficulty and in the event the intended appeal succeeds, all acts done in furtherance of the implementation of the order of the E&LRC will be prejudicial and detrimental to the applicant who stands to suffer irreparable harm.
7. On the part of the respondent, it was averred that the draft memorandum of appeal does not raise arguable grounds. Regarding the nugatory aspect, the respondent averred that execution is a lawful process and cannot be equated to irreparable loss and a successful party is entitled to the fruits of a just judgment. He averred that the intended appeal would not be rendered nugatory if stay of execution is denied since having worked for a period of 30 years and having earned a decent salary pursuant to his job group KV7 and the fact that after retirement he ventured into maize and wheat farming which gives him a considerable income, he is a man of means and as a result he is capable of reimbursing the decretal sum if the intended appeal succeeds.
8. During hearing of the application, the applicant's counsel Mr. Maiyo reiterated the contents of the affidavit in support of the application and submitted that apart from stating he is a man of means, the respondent has not presented anything to demonstrate that he has sufficient means to reimburse the decretal sum should the intended appeal succeed. Conversely, counsel maintained that the applicant is a state corporation, it generates revenue and receives funding from the national treasury, therefore it has means to settle its liabilities as and when they become due. Therefore, it would be appropriate to preserve the status quo and guard the right of appeal until a final determination.
9. In opposing the appeal, the respondent maintained that the applicant has not raised any arguable points of law and relied on Gikonyo & Ano. vs. Wambui (Civil Application No. E019 of 2022), where this Court held that the jurisdiction of this Court on second appeal is confined to matters of law.
10. Regarding the nugatory aspect, it was submitted that the respondent in his replying affidavit has explained he worked for 30 years earning a decent salary and that he is currently a commercial maize



and wheat farmer and therefore he is a man of means and he is able to repay the decretal sum which is not colossal in the event the intended appeal is successful.

11. We have given due consideration to the application, the affidavits in support of and in opposition thereto, as well as the parties' submissions and the authorities cited. Our invitation to intervene on behalf of the applicant has been invoked under Rule 5 (2) (b) of the Court of Appeal Rules, 2022, which grants this Court power in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 77, to order a stay of execution, an injunction or a stay of any further proceedings on such terms as the court may think just. More importantly, the principles for granting a stay of execution, injunction or stay of proceedings under Rule 5 (2)

(b) are well settled. In *Chris Munga N. Bichage vs. Richard Nyagaka Tongi, Independent Electoral & Boundaries Commission & Robert K. Ngeny* [2013] KECA 141 (KLR), this Court stated:

“The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.”

12. On the first prerequisite, that is, whether the applicant has demonstrated that it has an arguable appeal, this Court in *Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others* [2013] eKLR described an arguable appeal in the following terms:

“vii). An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.

viii). In considering an application brought under Rule 5 (2) (b) the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal.”

13. In satisfaction of the first limb, applicant has raised nine (9) grounds in its draft memorandum of appeal dated 18<sup>th</sup> February 2024. One of the grounds is that the learned Judge erred in law and in fact in reviewing the terms of the consent order issued on 8<sup>th</sup> June 2018, yet no such application for review was before it. Without going into the merits of the appeal as this will be the preserve of another bench, we are of the view that the question whether the learned judge erred in law and fact in reviewing the terms of the consent order of 8<sup>th</sup> June 2018 when no such application for review was before it is arguable, and it is certainly a matter for resolution during the hearing of the appeal.

14. On whether the appeal will be rendered nugatory should the impugned judgment and decree not be stayed, we note that this is a money decree. This Court in *Kenya Hotel Properties Limited vs. Willesden Properties Limited*, Civil Application Nai. No. 322 of 2006 (UR 178/06) stated:

“The decree is a money decree and normally the courts have felt that the success of the appeal would not be rendered nugatory if the decree is a money decree so long as the court ascertains that the respondent is not a “man of straw” but is a person who, on the success of the appeal, would be able to repay the decretal amount plus any interest to the applicant. However, with time, it became necessary to put certain riders to that legal position as it became obvious that



in certain cases, undue hardship would be caused to the applicants if stay is refused purely on grounds that the decree is a money decree.”

15. We are also guided by this Court’s decision in *National Industrial Credit Bank Ltd vs. Aquinas Francis Wasike & Ano*. [2006] KECA 333 (KLR) that:

“This Court has said before and it would dare repeating that while the legal duty is on an applicant to prove the allegation that an appeal would be rendered nugatory because a respondent would be unable to pay back the decretal sum, it is unreasonable to expect such an applicant to know in detail the resources owned by a respondent or the lack of them. Once an applicant expresses a reasonable fear that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge – see for example section 112 of the *Evidence Act*, Chapter 80 Laws of Kenya.”

16. The applicant is required to show that once execution is done after our refusal of the application, it may never get back its money should the appeal succeed. The respondent has stated categorically that he worked for 30 years and currently he is a commercial maize and wheat farmer, a man of means, and therefore in a position to pay back the decretal amount in case the appeal succeeds, and, in any case, the decretal amount is not colossal. We note that, the lack of rebuttal by the applicant on the respondent’s above contention is sufficient basis for us to hold that the second prerequisite has not been satisfied. Therefore, the allegation of considerable difficulty in recovering the decretal sum if the decree is satisfied is purely speculative. The effect of the applicant’s failure to satisfy the second limb is that, this application cannot succeed because both limbs must be proved to the satisfaction of the Court. Accordingly, the application dated 10<sup>th</sup> February 2025 is unmerited. It is dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAKURU THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA CIArb, FCIArb.**

.....

**JUDGE OF APPEAL**

**W. KORIR**

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**JUDGE OF APPEAL**

I certify that this is

a true copy of the original.

Signed.

Deputy Registrar

