



**Albeity Logistics Limited & another v Kilonzo (Suing as the Administrator and Personal Representative of the Estate of Benjamin Kyalo Masila– Deceased) (Civil Application E103 of 2024) [2025] KECA 773 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 773 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E103 OF 2024  
SG KAIRU, KI LAIBUTA & GWN MACHARIA, JJA  
MAY 9, 2025**

**BETWEEN**

**ALBEITY LOGISTICS LIMITED ..... 1<sup>ST</sup> APPLICANT**

**FEISAL ISLAM ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARY WAVINYA KILONZO (SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF BENJAMIN KYALO MASILA– DECEASED) ..... RESPONDENT**

*((Being an application for stay of execution of the Ruling of the Employment and Labour Relations Court of Kenya at Mombasa (Mbaru, J.) dated 9th May 2024 in ELRC Cause No. E004 of 2024))*

**RULING**

1. In their Notice of Motion dated 13<sup>th</sup> September 2024, the applicants, Albeity Logistics Limited and Feisal Islam, seek an order to stay of execution of the ruling of the Employment and Labour Relations Court (ELRC) (Mbaru, J.) delivered on 9<sup>th</sup> May 2024. In that ruling, the ELRC allowed an application by the respondent, Mary Wavinya Kilonzo, as the personal representative of Benjamin Kyalo Masila, deceased, to adopt an Award of the Director of Occupational Safety and Health Services (the Director) under the *Work Injury Benefits Act* (WIBA). The court ordered the applicants to pay the respondent Kshs.982,080 being compensation assessed by the Director.
2. It appears, based on the material before us, that the deceased was fatally injured in the course of his employment following which a claim for compensation was lodged with the Director who made the said Award in favour of the respondent. Thereafter, the respondent presented an application dated 17<sup>th</sup>



January 2024 to the ELRC which culminated in the ruling delivered on 9<sup>th</sup> May 2024, the subject of the intended appeal.

3. The applicants argued before the ELRC, that that court has no jurisdiction to enforce the Director's awards under WIBA. In overruling the applicants' contention on jurisdiction, the ELRC stated that:

“...a purposive application of WIBA, Article 162(2) the Constitution and Section 12 of the Employment and Labour Relations Court Act, 2011 gives the court jurisdiction to enforce a director's award under WIBA as herein sought by the applicant.”
4. The applicants promptly filed a Notice of Appeal dated 14<sup>th</sup> May 2024 on which the present application to stay execution of the said ruling is hinged.
5. Learned counsel for the applicants Mr. Ken Kioko, in his bid to persuade this Court that the present application for stay of execution is merited, relied on the grounds appearing on the face of the application, the supporting affidavit of Feisal Islam, and his written submissions which he highlighted orally.
6. Counsel submitted that the intended appeal is arguable. The issues arising, counsel urged, include questions whether ELRC has jurisdiction to enforce compensatory awards of the Director when the only statutory avenue to the ELRC under Section 52(2) of WIBA is an appeal; whether the respondent exhausted other avenues for recovery; and whether the ELRC erred in lifting the corporate veil.
7. Dagaye & Company Advocates for the respondent, in opposing the application filed a Notice of Preliminary Objection contending that the application is res judicata because the matter has already been determined by the ELRC in the impugned ruling. That objection is however misplaced as it is that very ruling that is the subject of the intended appeal before this Court.
8. On the merits of the application, although, Dagaye & Company Advocates maintain in their written submissions that the intended appeal is not arguable because the Director's Award itself is not challenged, bearing in mind the principles applicable as expounded by the Court in Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR, we are satisfied that the intended appeal is not frivolous. It is indeed arguable.
9. On the nugatory aspect, counsel for the applicants submitted that, in the impugned ruling, the learned Judge expressed that willful refusal to abide and comply with the orders of the court is punishable in contempt proceedings and that there is a risk of the 2<sup>nd</sup> applicant being subjected to such proceedings by the court below before the appeal is determined which will render the same nugatory. On the other hand, counsel for the respondent submitted that the appeal will not be rendered nugatory, and that the Award of the Director, which has not been challenged, will remain valid irrespective of the outcome of the intended appeal.
10. It is said that the term nugatory must be given its full meaning and that, whether an appeal will be rendered nugatory, depends on whether what is sought to be stayed, if allowed to happen is irreversible, or, if it is not reversible, whether damages will reasonably compensate the party aggrieved. See Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others (above).
11. Apart from the threat of the contempt proceedings apprehended by the applicants, the main contention by the applicants is that the ELRC overreached by assuming jurisdiction over a matter where it has none. We think that is a matter that warrants preserving the subject of the appeal for if it turns out that the ELRC acted without jurisdiction, we doubt that this will be reversible.



12. In the result, the application dated 13<sup>th</sup> September 2024 is hereby allowed and the ruling of the ELRC delivered on 9<sup>th</sup> May 2024 in Miscellaneous Application No. E004 of 2024 between the parties hereto is hereby stayed pending the hearing and determination of the applicants' appeal. Costs of the application will abide the outcome of the appeal.

**DATED AND DELIVERED AT MOMBASA THIS 9<sup>TH</sup> DAY OF MAY, 2025.**

**S. GATEMBU KAIRU, FCIARB**

**JUDGE OF APPEAL**

**DR. K. I. LAIBUTA CARB, FCIARB.**

**JUDGE OF APPEAL**

**G.W. NGENYE-MACHARIA**

**JUDGE OF APPEAL**

