



County Government of Vihiga v Kenya Union of Clinical Workers (Civil Application E243 of 2024) [2025] KECA 1411 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KECA 1411 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E243 OF 2024
HA OMONDI, F TUIYOTT & LK KIMARU, JJA
JULY 31, 2025**

BETWEEN

COUNTY GOVERNMENT OF VIHIGA APPLICANT

AND

KENYA UNION OF CLINICAL WORKERS & 76 OTHERS RESPONDENT

*(Being an application arising from the Ruling and order of the
Employment and Labour Relations Court at Bungoma (Jemimah
Keli, J.) dated 29th February 2024 in ELRC No. 32 of 2021)*

RULING

1. When the notice of motion of 30th September 2024 came up for plenary hearing, learned counsel Mr. Godia sought to withdraw prayer 2 of the motion. The request was not opposed by learned senior counsel Mr. Kamau Kuria for the respondent and was granted by Court.
2. That said, the withdrawn prayer lay bare a serious infirmity of the motion before us. The withdrawn prayer was for this Court to deem the record of appeal dated 30th September 2024 and filed on the same day as having been filed within the prescribed period and admitted as record of the Court for purposes of the appeal. The substantive prayers that remained were for an order of stay of execution of the ruling of the trial Court dated and delivered by Hon. Lady Justice Keli on 29th February 2024 in Bungoma Employment and Labour Relations Court ELRC No. 32 of 2021 and all consequential orders arising therefrom pending the hearing and determination of the intended appeal (prayer 5) and for stay of execution of the decree arising from the judgment of the superior court in the same matter pending the final determination of the intended appeal(prayer 6).
3. Answers by learned counsel Mr Godia to questions posed by the Court and our own understanding of the material placed before us in the motion and response to it reveal as follows. The trial Court pronounced itself in a judgment dated 26th May 2023 in which it ordered the parties to reconcile the



outstanding salary arrears payable to each claimant/employee and to file a consent in that respect in court within 21 days of the date of the judgment. The parties did not agree and the court proceeded to compute those sums in a judgment dated and delivered on 30th November 2023. Aggrieved the judgment of 30th November 2023, the applicant filed an application dated 13th December 2023 seeking review of the computation of salary arrears, among other prayers. The review application was disposed of in a ruling delivered on 29th February 2024.

4. The applicant concedes that it only filed a notice of appeal against the ruling of 29th February 2024, which notice was filed on 14th March 2024. As it is, there is no challenge to the partial judgment of 28th May 2023 and the subsequent judgment of 30th November 2023.
5. The tone, indeed the intent of the motion, is not just to stay the ruling but the two earlier decisions. But there lies a problem. As correctly submitted by learned senior counsel for the respondent, the jurisdiction of this Court to hear and determine a stay application under Rule 5(2)(b) of the Rules of this Court is triggered by the filing of a notice of appeal in accordance with Rule 77. It is a jurisdictional prerequisite (see for example the decisions in *Nguruman Limited v Shompole Group Ranch & Another* [2014] KECA 358 (KLR) and *D E N v P N N* [2014] KECA 234 (KLR)). Clearly, therefore, we cannot grant the prayer seeking to stay the judgments of 26th May 2023 and 30th November 2023 as no intention to challenge to them has been evinced by way of notices of appeal.
6. Regarding the review ruling, the ELRC simply dismissed a plea by the applicant to review a portion of its judgment of 26th May 2023 and the computation made in the judgment of 3rd November 2023. The ruling dismissed a review application and did not require the performance of any further obligations. Orders for positive obligations were contained in the decisions of 26th May 2023 and 30th November 2023. Unlike those two decisions, the order of 29th February 2024 was negative in nature.
7. It has been said by this Court, time without number (see for example *Western College of Arts and Applied Sciences v EP Oranga & 3 others* [1976] KECA 15 (KLR)), that a negative order is incapable of stay and the order of 29th February 2024 cannot fare any better.
8. As is clear, the notice of motion dated 30th September 2024 is beset by insurmountable difficulties and is hereby dismissed with costs. Dated and delivered at Kisumu this 31st day of July, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

Signed

DEPUTY REGISTRAR

