



**Kenya Aerotech Limited v Amakobe & 11 others (Appeal  
E179 of 2024) [2025] KEELRC 90 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 90 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E179 OF 2024  
JW KELI, J  
JANUARY 22, 2025**

**BETWEEN**

**KENYA AEROTECH LIMITED ..... APPLICANT**

**AND**

**SAUL AMAKOBÉ & 11 OTHERS ..... RESPONDENT**

**RULING**

1. The applicant was the respondent in the suit before the Trial Magistrates Court and the former employer of the respondents herein. The Trial Magistrate Court entered judgment delivered on the 30<sup>th</sup> May 2024 in favour of the respondents against the applicant for various items under the claim. The applicant being dissatisfied with the judgment filed memorandum of appeal dated 26<sup>th</sup> June 2024 received in court on the 26<sup>th</sup> June 2024.
2. The Applicant further filed application by way of Notice Motion dated 28th June 2024 and received in court on even date and brought under certificate of urgency under section 1A, 1 B 2 and 3A of the [Civil Procedure Act](#), Order 22 Rule 25, Rule 42 Rule 6, Order 51 Rule 1 of the [Civil Procedure Rules](#) and all enabling provisions of the law seeking the following substantive reliefs:-
  - a. That upon hearing and determination of the application herein , a stay of execution do issue against the judgment delivered in Milimani MCELRC NO. 545 of 2020; *Saul Amakobe & 11 others v Kenya Aerotech Limited* and all consequential orders and or proceedings arising therefrom pending the hearing and determination of the appeal filed herein.
  - b. The costs of this application be provided for.
3. The application was grounded on the basis that a judgment for compensation of the termination and terminal dues had been entered against the applicant who was aggrieved by the entire judgment and had lodged an appeal. The applicant contended that it was in the interest of justice to grant stay of execution as the judgment which it stated was based on errors. The applicant stated that it would suffer



substantial loss if stay was not granted due to nature of its business dealing with specialized goods, that it was willing to abide by conditions as may be order by court and that the application was brought without delay.

4. The application was further supported by the affidavit of Caroline Wangui Karanja who annexed the impugned judgment (CWK-1), the filed memorandum of appeal(CWK-2a) and correspondence to Judiciary requesting for proceedings (CWK-3). She confirmed they were ready to abide with any condition for the issue of Order stay of execution.
5. On the 7<sup>th</sup> October 2024 the court certified the application as urgent and granted a temporary order of stay of execution pending the hearing and determination of the application interpartes. The court directed the response to be filed within 14 days.
6. The Respondents filed a response vide replying affidavit sworn by Saul Amakobe and Mutuva Mutisya jointly on the 16<sup>th</sup> of July 2024 who opposed the application on behalf of all the Respondents. They opposed the application for the reason that the applicant had terminated their employment vide redundancy and failed to honour the payments under the termination letters (KA-2 were the termination letters providing for one month salary notice pay, severance pay, pension, accrued leave and salary). They stated that as condition for the stay the applicant ought to pay them the admitted sum awaiting appeal on the compensation award and the Cooperative shares. They further stated that no defence was offered at trial and the appeal was meant to delay their justice. In the end they stated the court ought to order payment to the respondents of half of the decretal amount as a condition for a stay of the decree.

## Decision

7. The application was canvassed by way of written submissions. Both Parties filed.
8. The [Employment and Labour Relations Court \(Procedure\) Rules 2024](#) on stay of execution pending appeal states: -

“21.

- (1) Where an application for stay of execution pending appeal has been lodged, the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court.
- (2) An application for stay of execution pending appeal shall be filed in the appeal file.”  
Since the Court Rules are silent on the conditions for granting stay then the lacuna is addressed by Order 42 Rule 6 (2) of the Civil Procedure Rules to wit:- “(2) No order for stay of execution shall be made under subrule (1) unless—
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”



9. The parties relied on several authorities which the court noted were consistent with the decision in *Butt -vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal gave guidance on how a Court should exercise discretion in an application for a stay of execution, that: -

- “1. The power of the Court to grant or refusal an application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle is granting or reusing a stay is: If there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge’s discretion. (sic) (trial Court judgement).
3. A judge should not refuse a stay if there is a good ground for granting it merely because in his opinion a better remedy may be available to the applicant at the end of the proceedings.
4. The Court in exercising its powers under order XLI rule 4 (2) (b) of the civil procedure Rules can order security upon application by either party or on its own motion. Failure to put security of costs as ordered with cause the order for stay of execution to lapse”.

10. In the instant case the application was brought without delay the judgment having been entered on the 30<sup>th</sup> May 2024 and application filed on the 28<sup>th</sup> June 2024. The applicant lodged the appeal on the 26<sup>th</sup> June 2024 within the statutory period of 30 days of lodging appeal to the court under Rule 12 of the *Employment and Labour Relations Court (Procedure) Rules 2024* to wit:-

“ 12

- (2) Where an appeal is from a magistrate’s court or where no period of appeal is specified in the written law referred to in sub-rule (1), the appeal shall be filed within thirty days from the date the decision is delivered.”

11. The court in exercise of its unfettered judicial discretion finds that it must balance between the interest of the judgment holder and the applicant. In the instant case, the applicant had issued termination letters to the Respondents awarding notice pay and severance pay which was not paid leading to this suit. The trial court awarded the two items as per the said termination letters. There were other awards. These amounts are vested on the respondents as of right upon termination and as per the said letters of termination. There is nothing to appeal on and any further delay in settlement is injustice in itself. There is no triable issues on these two items as they were in the termination letters. The applicant stated it was willing to abide by the conditions of the court. At the same time, the court under the Butt Case ought to exercise its jurisdiction to allow the appeal and ensure it is not rendered nugatory. Stay ought to issue on the other awards of compensatory and cooperative shares as the payment of those amounts would render the appeal nugatory.

12. The applicant submitted that it was ready to issue a bank guarantee of Kshs. 5 Million. It is trite that submissions are not pleadings hence those are just mere words as the advocate cannot commit the client under submissions. The court is satisfied that the applicant has met the conditions under Order 42 Rule 6 of the *Civil Procedure Rules* for grant of the Order of stay of execution. The court finds as fair condition of the stay, the payment of the total sum of Kshs. 7,316,409.07 the equivalent of the monies with respect to notice pay and severance pay due to the respondents as per their respective termination



letters and awarded by the trial court be deposited in the account of the Respondent's advocates within 30 days.

13. In the upshot the application dated 28<sup>th</sup> June 2024 is allowed as follows:-
  - a. The court grants Order of a stay of execution of the judgment delivered in Milimani MCELRC NO. 545 of 2020; Saul Amakobe & 11 others v Kenya Aerotech Limited and all consequential orders and or proceedings arising therefrom pending the hearing and determination of the appeal filed herein on condition the total sum of Kshs. 7,316,409.07 the equivalent of the monies with respect to notice pay and severance pay due to the respondents as per their respective termination letters and awarded by trial court be deposited in the client account held by the Respondents' Advocates within 30 days in default the Order lapses automatically.
  - b. Costs of the application to the Respondents.
14. Mention on 12<sup>th</sup> February 2025 for directions in the appeal.
15. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22<sup>ND</sup> DAY OF JANUARY , 2025.**

**JEMIMAH KELI,  
JUDGE.**

In the presence of:

Court Assistant: Otieno

Applicant : -Nyamwamu h/b Muchai

Respondent: Ms Wangui h/b Mungai

