



REPUBLIC OF KENYA



**Odima v Maya Freight Limited (Cause 1876 of 2015)  
[2025] KEELRC 24 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 24 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1876 OF 2015  
JW KELI, J  
JANUARY 14, 2025**

**BETWEEN**

**SIMON ODIMA ..... CLAIMANT**

**AND**

**MAYA FREIGHT LIMITED ..... RESPONDENT**

**RULING**

**Legal Representation**

Applicant- Wachira Wanjiru & Company Advocates

Respondent - M'njau & Mageto Advocates

1. The Applicant vide Notice of Motion application dated 30<sup>th</sup> August 2024 brought under the provisions of section 3 and section 17(1) of the *Employment and Labour Relations Court Act*, Rule 5(2) (b) of the Court of Appeal Rules 2022 and Rules 44 and 45 of the Employment and Labour Relations Court (procedure ) Rules 2024 sought the following orders:-
  - a. Spent
  - b. Spent
  - c. That this Honourable Court be pleased to stay execution of the Judgment dated 24th day of June, 2024 pending the hearing and determination of the Appeal.
  - d. That the costs of this application be provided for.
2. Grounds of the application



- a. That the Respondent/Applicant being aggrieved by the decision of the Honourable Justice Ocharo Kebira delivered on 24/06/2024 and has preferred an appeal against the whole of the said decision.
  - b. That the Respondent/Applicant has filed a Notice of Appeal dated 1st July, 2024.
  - c. That the Respondent/Applicant has also requested for certified copies of typed proceedings to facilitate compiling of the Record of Appeal.
  - d. That the Respondent/Applicant's Appeal is arguable and with a high probability of success.
  - e. That the Claimant/Respondent has already filed a Bill of Costs for taxation which is set for hearing on 3rd September, 2024.
  - f. That the Applicant stand to suffer irreparable harm and damage if the order for stay of execution is not granted as the Claimant/Respondent may proceed to execute against the Applicant.
  - g. That if stay of execution is not granted, the Respondent/Applicant's Appeal will be rendered nugatory and a pure academic exercise as they may never recover the decretal sum from the Claimant/Respondent as he has no known source of income or financial stability.
  - h. That the Claimant/Respondent shall not suffer any prejudice if the Application is allowed.
  - i. That the Respondent/Applicant is ready and willing to deposit security in due performance of the decree.
  - j. That this Application has been made without unreasonable delay.
  - k. That it is in the interest of justice and equity that the prayers sought herein are granted.
3. The application was opposed by the Claimant/ Respondent through his affidavit sworn on the 17<sup>th</sup> September 2024. He stated that he was entitled to enjoy the fruits of his judgment delivered on the 24<sup>th</sup> June 2024. That the application was filed in court after inordinate unexplained delay of more than 2 months from date of judgment. That the applicant had not demonstrated the likelihood of suffering substantial loss in the event the order of stay is not granted. That the applicant had not defined the security it was offering for performance of the decree. That he was a man of means capable of refunding the money in event the appeal is successful. The Respondent pleaded that in the event the application is allowed the court orders he be paid half of the decretal amount and the rest be deposited in interest earning joint account of the advocates.

### **Decision**

4. The application was canvassed by way of written submissions. Both parties complied. The issue for determination was whether the application was merited.
5. The Employment and Labour Relations Court (Procedure ) Rules 2024 on stay of execution in case of 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 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.”

6. The judgment in the instant case was delivered on the 24<sup>th</sup> June 2024. The notice of appeal dated 1<sup>st</sup> July 2024 was filed on the 26<sup>th</sup> August 2024. The application was filed on the 30<sup>th</sup> August 2024. The court was persuaded that this was not inordinate delay for purposes of seeking for stay of execution. The applicant has offered to deposit security in performance of the decree. The Court of appeal in *Butt -vs Rent Restriction Tribunal (1982) KLR 417* gave guidance on how a Court should exercise discretion in an application for stay of execution and held 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 refusing 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”.

7. The Respondent stated in his affidavit that he was a man of means but did not demonstrate his means. He lost his employment with the Applicant and did not state his subsequent source of livelihood. The court finds that there is a high likelihood of the appeal being rendered nugatory in the event the applicant is successful in the appeal. I have taken note of the submissions of the respondent. I uphold the decision of the Court of Appeal *Butt -vs Rent Restriction Tribunal (1982) KLR 417* (supra) to apply in the instant case.

8. In the upshot the application is allowed as follows:-

a. The Court grants an Order of stay of execution in the Judgment of the Court dated 24<sup>th</sup> June 2024 pending the hearing and determination of the intended appeal on condition that the decretal amount is deposited within 30 days in a joint interest-earning bank account opened by Advocates for the parties on record and in default execution may proceed.

b. Costs of the application to the respondent.



9. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14<sup>TH</sup> DAY OF  
JANUARY, 2025.**

**JEMIMAH KELI,**

**JUDGE.**

In the Presence of:

Court Assistant: Otieno

Claimant : - Absent

Respondent/ Applicant: Aziz Annan

