



REPUBLIC OF KENYA



KENYA LAW
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**Printwell Industries Limited v Kaloki (Employment and Labour Relations
Appeal E175 of 2024) [2025] KEELRC 16 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 16 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E175 OF 2024**

JW KELI, J

JANUARY 14, 2025

BETWEEN

PRINTWELL INDUSTRIES LIMITED APPELLANT

AND

STEPHEN KIMANTHI KALOKI RESPONDENT

RULING

Legal Representation:

For Applicant: - Luchiri & Company Advocates

For Respondent: - Nguu & Company Advocates

1. The Applicant vide of Notice of Motion Application dated 19th June 2024 and brought under Sections 79G and 95 of the *Civil Procedure Act*, Order 42 Rule 6, Order 51 Rule I of the Civil Procedure Rules, 2010 and Rule 17(1) of the Employment and Labour Relations Rules, 2016 and all the enabling provisions of the law sought the following Orders:-
 1. Spent
 2. The Applicant be granted leave to file an appeal out of time against the judgement delivered on 5th April 2024 by Honourable S. N. Muchungi (PM) in CMEL No. E. 1869 OF 2021: Stephine Kimanthi Kaloki vs. Printwell Industries Limited
 3. Spent
 4. Pending the hearing and determination of the intended Appeal by the Applicant herein, this Honourable Court be pleased to order stay of execution of the judgment dated 5th April 2024 arising from CMIEL NO. E. 1869 OF 2021: Stephine Kimanthi Kaloki vs. Printwell Industries



Limited, as well as the resultant decree thereof and/or any other subsequent proceedings meant to enforce the judgment.

5. The costs of this Application abide the outcome of the Appeal.
2. Grounds of the application
1. That judgment in CMEL NO. E. 1869 OF 2021: Stephine Kimanthi Kaloki vs. Printwell Industries Limited was delivered on 5th April 2024. That the Applicant is desirous of appealing the said decision.
 2. That in preparation for lodging the appeal before this Honourable Court, the Applicant through its advocates on record, have made a request to the court for certified copies of typed proceedings and judgment through a letter dated 14th June, 2024.
 3. That the Applicant has filed the Application herein without unreasonable delay and the intended appeal raises triable issues with a high chance of success.
 4. That further, if the order of stay of execution is not allowed, the intended appeal shall be rendered nugatory and the Applicant will suffer substantial loss, as the Respondent has already instructed auctioneers to attach and sale the Applicant's motor vehicle registration number KBM 411G.
 5. That if the decretal sum is paid, the Applicant may not recover the sum from the Respondent as he is not in a financial position to refund the sum if the appeal succeeds.
 6. That the Respondent will not suffer any prejudice if this Honourable Court grants the Applicant the prayers as sought in this Application.
 7. That in the light of the above facts and in the interest of justice this mater be certified as urgent, heard in the first instance and the orders sought herein be granted forthwith.
 8. That it is in the interests of justice, fairness, and equity that the prayers sought in this Application be allowed as prayed.
3. The application was supported by the affidavit Benjamin Mwololo sworn on the 18th of June 2024 wherein among others he attached the judgment delivered on the 5th of April 2024(BM-2), a request for certified copies of the proceedings and judgement of the lower court (BM-3 a-d), draft memorandum of appeal (BM-4) and a copy of notification of sale of movable property being Motor Vehicle Registration No. KBM 411G(BM-5).

Response

4. The application was opposed by the Respondent vide his replying affidavit sworn on the 6th August 2024 and received in court on the 10th September 2024. The respondent stated that the application was meant to deny him enjoyment of fruits of his judgment. The Respondent stated that he was gainfully employed thus fully able to reconstitute the applicant in the event of the success of his appeal hence no prejudice would be suffered by the applicant if the stay is not granted. The Respondent further urged that should the court be inclined to allow the unmerited application then the order should be conditional to the deposit of the full decretal amount in a joint interest-earning escrow account to be held by both parties' advocates.

Decision

5. The application was canvassed by way of written submissions. Both parties filed.



On prayer for an extension of time to file an appeal

6. Rule 12 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides time for filing an appeal to the court as follows:-

“

12.

- (1) Where a written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified under that written law.
- (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.”

7. The judgment of the Trial Magistrate Court was delivered on the 5th April 2024. According to Rule 12(2) of the Court(supra), the appeal ought to have been filed within 30 days. The draft memorandum of appeal was filed in court on the 19th June 2024. The applicant states that this was not an inordinate delay and further stated that their intended appeal raised triable issues one being the Respondent’s employment was not terminated for he absconded duty and that the trial court relied on documents not produced at trial.

8. Rule 18 of Employment and Labour Relations Court (Procedure) Rules 2024 provides for extension of time to file appeal as follows:-“ 18. The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.”

9. The principles for extension of time for filing appeals were stated by the Supreme Court Fahim Yasin Twaha v Timamy Issa Abdalla & 2 others [2015] eKLR where it upheld its earlier decision in Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR) as follows:-“29] As regards extension of time, this Court has already laid down certain guiding principles. In the Nick Salat case, it was thus held:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;



4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied].” The court upholds the decision to apply in the instant application.

10. The Applicant did not disclose the reason for the delay of over 2 months in applying for an extension of time to appeal. The court however noted that the appeal raised triable issues related to the question of termination of the employment. The Court is satisfied that the delay of two months was not inordinate and that the basis for the extension of time to file an appeal laid by the applicant was satisfactory.

On the prayer for stay of execution.

11. The Employments 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.”

12. In Butt -vs Rent Restriction Tribunal (1982) KLR 417 the Court of Appeal gave guidance on how a Court should exercise discretion in an application for a 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 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”.
13. On perusal of the court record, the court finds that Justice Ocharo Kebira on the 9th of July 2024 granted a temporary order of stay of execution in the application. Applying the principles set out by the Court of Appeal in Butt Case , the court holds that there was no inordinate delay in making the application, the intended appeal raises triable issues, and that it was not in the interest of justice to prevent the appeal. Taking into consideration the fact that the memorandum of appeal raises triable issues, the applicant is willing to provide security for the performance of the decree, and the fact that there exists a temporary order of stay, the court grants an order of stay of execution pending the hearing and determination of the appeal on condition that the decretal amount is deposited in interest-earning account held by the advocates of both parties within 30 days of this Order in default the Order to lapse automatically unless extended by court on application.
14. In the upshot, the application dated 19th June 2024 is allowed as follows:-
 - a. The Applicant is granted leave to file an appeal out of time against the Judgement delivered on 5th April 2024 by Honourable S. N. Muchungi (PM) in CMEL No. E. 1869 OF 2021: Stephine Kimanthi Kaloki vs. Printwell Industries Limited. The filed Memorandum of appeal dated 19th June 2024 and Record of Appeal dated 4th October 2024 are deemed as duly filed.
 - b. An Order of stay of execution is granted pending the hearing and determination of the Appeal by the Applicant herein, of the judgment dated 5th April 2024 arising from CMIEL No. E. 1869 OF 2021: Stephine Kimanthi Kaloki vs. Printwell Industries Limited, as well as the resultant decree thereof and/or any other subsequent proceedings on the condition that the decretal amount is deposited in interest-earning account held in the names of the advocates of both parties within 30 days of this Order in default the Order to lapse automatically unless extended by Court on application.
 - c. Costs of the application to the Respondent.
15. Mention on 17th February 2025 for directions on hearing of the appeal.
16. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF JANUARY, 2025.

**JEMIMAH KELL,
JUDGE.**

In the presence of:

Court Assistant: Caleb

Appellant : - Mr. Otieno

Respondent: Ms. Nguu

