



**Sawe v Ekaterra Tea Kenya PLC (Cause E012 of 2023)  
[2025] KEELRC 285 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 285 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
CAUSE E012 OF 2023  
J RIKA, J  
FEBRUARY 7, 2025**

**BETWEEN**

**DAVID SAWE ..... CLAIMANT**

**AND**

**EKATERRA TEA KENYA PLC ..... RESPONDENT**

**RULING**

1. Judgment was delivered in favour of the Claimant, on 18<sup>th</sup> July 2024.
2. The Court concluded that his contract of employment, was terminated by the Respondent unfairly and unlawfully, and granted him compensation equivalent of 6 months' salary at Kshs. 6,003,986.04, and 2 months' salary in lieu of notice at Kshs. 2,001, 328.72 – total Kshs. 8,005,314.72.
3. Both Parties were not satisfied with the Judgment, and have filed Notices of Appeal.
4. The Respondent filed an Application dated 27<sup>th</sup> August 2024, seeking an order for stay of execution of the Judgment, pending hearing and determination of the Intended Appeal.
5. The Application is supported by the Affidavit of Jonathan Waguru, the Respondent's in-house General-Counsel, sworn on 26<sup>th</sup> August 2024, and an Affidavit sworn on even date, by the external Counsel for the Respondent, Esther Kinyenje –Opiyo.
6. Counsel and her Client state that, both Parties are dissatisfied with the Judgment, and have filed Notices of Appeal; the Respondent has an arguable Appeal; the Intended Appeal would be rendered nugatory if execution proceeds; the Claimant's assets, or his whereabouts, are unknown, and the Respondent would be impaired, in recovery of the decretal sum, if the Intended Appeal is allowed; and the Respondent is willing to furnish security by way of bank guarantee.
7. The Claimant opposes the Application, through his Replying Affidavit, sworn on 16<sup>th</sup> September 2024. He states that an order for stay of execution is discretionary. He ought not to be unreasonably



deprived the fruits of his Judgment. The Respondent has not established that execution would result in irreparable loss. The Respondent has not demonstrated that the Claimant does not have the financial ability to refund the decretal sum, in event the Intended Appeal is successful. The Application is meant to obstruct the Claimant, in enjoyment of his fruits of litigation.

8. Parties agreed to have the Application considered and determined on the strength of their respective Affidavits and Submissions. They confirmed filing and exchange of Submissions, at the last mention before the Court, on 3<sup>rd</sup> December 2024.
9. They had also indicated to the Court, that they were negotiating terms of settling the Application, but were not able to agree, as at the last appearance before the Court.

**The Court Finds: -**

10. Both Parties are dissatisfied with the Judgment on record, and have filled their respective Notices of Appeal.
11. Those Notices indicate that there is an Intended Appeal, and an Intended Cross-Appeal.
12. It is necessary therefore, that both Parties are allowed to exercise their rights of appeal. It is imprudent to proceed with execution of a Judgment, which is being challenged on appeal, by both Parties.
13. They both challenge the core findings of the trial Court, and remedies granted by the Court. The Claimant, in his Notice of Appeal, discloses part of his grounds in the Intended Cross-Appeal. They include that: the trial Court erred in finding that the Respondent had valid reason to dismiss him; finding that advertisement of his position by the Respondent, did not render his position redundant; finding that the Claimant was only entitled to 2 months' salary in lieu of notice; and finding that the Claimant was only entitled to 6 months' salary in compensation.
14. The Respondent, in its Draft Memorandum of Appeal also challenges the award of 2 months' salary in lieu of notice, and 6 months' salary in compensation for unfair termination. It challenges findings of the trial Court on procedural and substantive justice.
15. Both Parties have challenged the core findings, and remedies granted by the Court.
16. Why should execution of Judgment, which granted the Claimant remedies he feels were insufficient proceed, while he and the Respondent have both expressed their intention to challenge those remedies on appeal?
17. The Court does not think it is necessary to go into enquiring about the other principles submitted by the Parties, which regulate orders of stay of execution. It is sufficient that both Parties are dissatisfied with the Judgment sought to be appealed against. They challenge fundamental aspects of the Judgment. Both Parties have notified the Court that they are moving to the Court of Appeal, and have sought the trial proceedings, to enable them present their respective Appeals. The Judgment of the Court must therefore, remain frozen.

**It Is Ordered: -**

- a. Execution of Judgment/ Decree of this Court made on 18<sup>th</sup> July 2024 is stayed pending filing, hearing and determination of the Intended Appeal and Cross-Appeal.
- b. No order on the costs.



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT KERICHO,  
THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025.**

**JAMES RIKA**

**JUDGE**

