



**Kenya Engineering Workers Union v Kenya Marine Contractors (EPZ) Limited
(Cause E047 of 2023) [2025] KEELRC 339 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 339 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E047 OF 2023
M MBARÚ, J
FEBRUARY 6, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
KENYA MARINE CONTRACTORS (EPZ) LIMITED RESPONDENT**

RULING

1. The respondent, Kenya Marine Contractors (EPZ) Limited, filed an application dated 13 November 2024 under Rule 45 of the Employment and Labour Relations Court (Procedure) Rules seeking orders;

The court is pleased to make an order for a stay of proceedings in ELRC Cause No.E047 of 2023, Kenya Engineering Workers Union v Kenya Marine Contractors (EPZ) Limited, pending the hearing and determination of the intended appeal from the ruling and orders made by the ELRC dated 26 September 2024.

Costs of and incidental to this application to abide by the result of the appeal.

2. The application is supported by the affidavit of Michael Tham, the general manager, who avers that the ruling delivered on 26 September 2024 reinstated the claimant's suit and awarded costs of Ksh.20 000 to the respondent. The respondent filed a Notice of Appeal dated 3 October 2024. There is an arguable appeal, and unless the proceedings herein are stayed, they will be rendered nugatory. The application is filed without delay and should be allowed in the interests of justice.
3. The claimant filed grounds of Opposition that the ruling delivered on 26 September 2024 and reinstated the claim dismissed for non-attendance. The respondent has not offered security if the proceedings are stayed. No draft appeal is annexed to the application to show it is arguable or has a high chance of success. The respondent has not sought leave to file an appeal out of time, and the only



record is a letter dated 8 October 2024 seeking typed proceedings. This is a delay tactic to stall justice that the parties have had since 2012, and the application should be dismissed.

Both parties attended and agreed to file written submissions.

4. The respondent submitted that there is an arguable appeal, and the orders sought should be issued. When the claimant failed to attend court for the hearing, the court exercised its discretion in dismissing the claimant's case for want of attendance and prosecution. Rule 22 of the Employment and Labour Relations Court (Procedure) Rules provides for proceedings without either party.
5. In this case, when the matter came up for hearing, the claimant's authorized representative was not present in court, so the hearing could not proceed. No reasonable cause was given for the absence on 28 May 2024, and the court correctly addressed the matter and dismissed the suit.
6. The claimant moved the court for a review. Instead of filing the affidavit of the attending representative, the general secretary filed his affidavit, which the court took into account but allowed the reinstatement of the suit. Aggrieved, the respondent has sought to file an appeal. There are arguable grounds, and the application seeking a stay of proceedings to allow the filing of the intended appeal should be allowed. The respondent relied on the cases of *Ndiritu v Muigai & 3 others Civil Appeal E258 of 2023 [2024] eKLR*; *Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR*.
7. The claimant submitted that the application by the respondent is defective and does not disclose the damage to be suffered if the orders sought are not issued. There is no draft memorandum of appeal to demonstrate any arguable matter with a high chance of success. The application is only meant to delay justice. The employees' took loans in December 2023 and are under the administration of Anant Bhati LLP Certified Public Accounts, which has not been disclosed to the court. The advocates for the respondent are acting without authority from the respondents under administration in line with Sections 560 and 581 of the *Insolvency Act*.
8. The claimant submitted that events overtook the application. The respondent filed a defective Appeal E230 of 2024 at Mombasa because it did not have authority and was filed out of time without leave or a Certificate of Delay.

Determination

9. The respondent is seeking a stay of proceedings herein to allow it to file an intended appeal following the court ruling delivered on 26 September 2024, reinstating the claim dismissed for want of attendance and prosecution.
10. In reply, the claimant raised exciting matters, such as the respondent's administration and an appeal filed by Mombasa E230 of 2024.
11. The respondent has not disclosed such matters to the court. The claimant only filed grounds of Opposition to the application and no affidavit based on the stated facts.
12. An application seeking a stay of proceedings pending an intended appeal must be addressed on a case-by-case basis. However, the main principles to guide the court are whether there is a draft memorandum of appeal that is likely to be rendered nugatory if the stay of proceedings is not allowed as held in the case of *Makokha v County Government of Bungoma & 4 others [2024] KECA 211 (KLR)*.
13. It is, however, acknowledged that a stay of proceedings is a serious, grave and fundamental judicial action which interferes with the right of any party to conduct litigation as held in *M/S Karsan Ramji & Sons Limited v Athumani & another (Suing for and on behalf of the Wamwanyundo Clan & 6 others*



[2024] KECA 563 (KLR). Stay of proceedings impinges on the right of access to justice, the right to be heard without delay and the right to a fair trial.

14. The import of stay of proceedings is aptly captured in the case of Lucy Waithera Kimanga, Damaris Wanjiku Waiganjo & Margaret Wambui Chuchu v John Waiganjo Gichuri [2015] KEHC 6120 (KLR). The court held that;

The Court is aware that the Defendant has an unfettered right of appeal, which it has sought to exercise. However, that right has to be balanced against the plaintiff's right to equal treatment in law and to have his case determined without unreasonable delay.

That constitutional desire demands proceedings should not be hindered without sufficient cause. The principle of justice informs the position of the law in Article 159 of *the Constitution*, which expresses the now common principle of law known as the overriding objective of the law: that cases should be disposed of in a just, proportionate, expeditious and affordable manner. That explains why the law on stay of proceedings pending appeal will be concerned with whether it is in the interest of justice to order a stay of s and cons of granting or not granting the order. It will also consider such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.

15. In this case, the respondent has filed a Notice of Appeal. The intended appeal is not actualized.
16. The respondent has not tried to file a draft memorandum of appeal or stated the loss to be suffered if the court proceeds to hear the claim on the merits. Fundamental principles for the grant of stay of proceedings are not met. The averments that there there exist in Mombasa appeal E230 of 2024 were not confirmed.
17. The court finds no merit in the application dated 13 November 2024. Hearing directions on the claim shall be issued. The application is dismissed with costs to the claimant.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF FEBRUARY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

