



**Guo v Beijing Zhongji Intergrated Housing technolgy Co ltd & 2 others
(Cause E328 of 2023) [2025] KEELRC 999 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 999 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E328 OF 2023
S RADIDO, J
MARCH 27, 2025**

BETWEEN

JUN GUO CLAIMANT

AND

**BEIJING ZHONGJI INTERGRATED HOUSING TECHNOLOGY CO
LTD 1ST RESPONDENT**

JINGU KENYA INVESTMENT LTD 2ND RESPONDENT

KENYA (CHN) HOKING REAL ESTATE CO LTD 3RD RESPONDENT

RULING

1. Jun Guo (the Claimant) sued the Respondents on 20 April 2023, alleging constructive dismissal and breach of contract.
2. Filed together with the Memorandum of Claim was a Motion dated 19 April 2023, seeking interim orders.
3. When the Motion was placed before the Court on 24 April 2023, ex-parte stage, the Court directed the Respondents to deposit in Court Kshs 50,000,000/- as security within 14 days of 24 April 2023.
4. On 8 May 2023, the 1st – 3rd Respondents raised Notices of Preliminary Objection dated 5 May 2023 opposing the Claimant’s Motion.
5. On 9 May 2023, the 3rd Respondent through a different advocate filed another Notice of Preliminary Objection dated 9 May 2023.
6. The flurry of filings continued on 11 May 2023, when the 3rd Respondent filed a Motion seeking the setting aside of the orders stated to have been issued on 25 April 2023.



7. The Respondents did not comply with the orders to deposit Kshs 50,000,000/- in Court within 14 days, or provide a bank guarantee and on 23 May 2023, the Claimant filed a Motion seeking an order restraining the Respondents from dealing with their only known asset I.R. No. 1/462/IR No 16611/1 (Original Number 1/214 and Part of 1/213) situate in Nairobi.
8. The 1st and 2nd Respondents filed a Notice of Preliminary Objection in opposition to this Motion.
9. The 3rd Respondent filed its Notice of Preliminary Objection on 9 June 2023.
10. The 1st and 2nd Respondents Preliminary Objection was heard and was dismissed in a Ruling delivered on 3 October 2023.
11. On 17 October 2023, the 3rd Respondent filed a Notice of Appeal against the Ruling (its Notice of Preliminary Objection had not yet been determined).
12. The Court then proceeded to hear the Claimant's Motion dated 23 May 2023 and it delivered a Ruling on 15 April 2024 inhibiting further dealings with the named property until compliance with the order to deposit Kshs 50,000,000/- in Court or furnishing of a bank guarantee.
13. On 17 April 2024, the 3rd Respondent filed a Notice of Appeal against the Ruling on 17 April 2024. The 1st and 2nd Respondents filed Notices of Appeal on 24 April 2024.
14. On 3 June 2024, the 3rd Respondent filed a Motion seeking a stay of execution of the Ruling. The Motion was certified urgent on 5 June 2024, and set down for hearing on 2 July 2024.
15. On 2 July 2024, the Court directed the parties to file and exchange responses and submissions with Ruling date to be given on 19 September 2024.
16. The Court took brief oral submissions from the parties on 7 October 2024 and dismissed the Motion. At the same time, the Court gave directions on the expeditious hearing of the Cause with mention set for 18 November 2024 to confirm and schedule a hearing date.
17. The Court did not sit on 18 November 2024.
18. On 11 December 2024, the 1st and 2nd Respondents filed a Motion seeking orders expunging certain documents filed by the Claimant from the record.
19. The torrent of Motions continued on 28 January 2025, when the 1st and 2nd Respondents filed a Motion seeking orders:
 - i. That there be an order of stay of proceedings in this suit pending the hearing and determination of Civil Appeal No. E462 of 2024 in the Court of Appeal.
 - ii. That the costs be in the cause.
20. When the Court sat on 4 February 2025, the 1st and 2nd Respondents informed the Court that they had filed the Motion seeking a stay of the proceedings.
21. The Court directed the parties to file and exchange responses and submissions.
22. The Claimant filed a replying affidavit opposing the Motion on 18 February 2025, and the 1st and 2nd Respondents filed their submissions on 24 February 2025 (should have been filed and served before 21 February 2025).
23. The Claimant filed his submissions on 4 March 2025.
24. The Court has considered the Motion, affidavits and submissions.



25. In their submissions, the Respondents urged that they had filed an Appeal against a Ruling of this Court and that the appeal raised arguable points and, therefore, they had met the threshold for grant of stay of proceedings herein.
26. The Respondents took umbrage in the holding by the Court of Appeal in *Karsan Ramji & Sons Ltd v Athumani & Ar* (suing for and on behalf of the Wamwanyundo Clan & 6 Ors (2024) KECA 563 (KLR) that:

the principles that guide the consideration of an application of this nature are now well settled. For an applicant to succeed, he or she must have a pending appeal or must have expressed an intention to appeal against the decision in question by filing a Notice of Appeal in order to properly invoke this Court's jurisdiction. It should then be demonstrated that the appeal or intended appeal, as the case may be, is arguable, or as is often said, not frivolous. The applicant must, in addition, show that the appeal would be rendered nugatory absent stay, the two conditions are considered conjunctively so that failure to satisfy either leads to dismissal of the application.
27. In opposing the Motion, the Claimant cited a passage from *Kenya Wildlife Service v James Mutembei* (2019) eKLR that:

stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right to access justice, right to be heard without delay and overall right of fair trial. Therefore, the test for stay of proceedings is high and stringent.
28. In its Ruling delivered on 15 April 2024, the Court dismissed the 1st and 2nd Respondents' Preliminary Objections.
29. The Respondents in the exercise of their legal right opted to file Notices of Appeal with the Court of Appeal and pending before the Court of Appeal in Civil Appeal No. E462 of 2024.
30. It is not in dispute that the pending appeal questions the jurisdiction of this Court. Where a Court finds that it has no jurisdiction, it must down its pen.
31. Legal prudence would have required that this Court holds back its pen until the Court of Appeal renders itself on the question of jurisdiction of this Court.
32. The Respondents are asking the Court to exercise a discretion in the interests of justice.
33. The Respondents have failed to comply with this Court's orders to deposit security in Court. The first order required the Respondents to deposit Kshs 50,000,000/- but the order was varied at the request of the Respondents with an order to provide a bank guarantee. It was not provided.
34. The failure prompted the Court to interdict the Respondents from dealing with a named property.
35. Considering the Respondents conduct, the Court is of the view that they are not deserving of the exercise of the Court's discretion.

DIVISION - Orders

36. In light of the above, the Court orders that the Motion dated 27 January 2025 be dismissed with costs to the Claimant.



DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIVASHA ON THIS 27TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant CM Advocates LLP

For 1st and 2nd Respondents C. Mputhia Advocates

For 3rd Respondent John Mburu & Co. Advocates

Court Assistant Wangu

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