



REPUBLIC OF KENYA



**KENYA LAW**  
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**Baplix Company Limited v Baragu & another (Employment and Labour Relations Appeal E344 of 2024) [2025] KEELRC 861 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 861 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E344 OF 2024**

**JW KELI, J  
MARCH 14, 2025**

**BETWEEN**

**BAPLIX COMPANY LIMITED ..... APPLICANT**

**AND**

**ANNE WAMBUI BARAGU ..... 1<sup>ST</sup> RESPONDENT**

**M & G STATIONERY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellant/Applicant brought an Application by way of Notice of Motion dated 5<sup>th</sup> November, 2024 brought under Sections 1A and 3A of the *Civil Procedure Act* 2010, Orders 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules 2010, the *employment and Labour relations Court act*, the Employment and Labour Relation Rules and all other enabling provisions of the law. The Applicant seeks the following orders;
  - i. Spent
  - ii. That pending the hearing of this Application inter-partes there be a Stay of execution of the Ruling of the Honourable Magistrate delivered on the 30th day of October 2024 in Milimani MCELRC No. E1649 of 2022 or the suit appealed against in this matter.
  - iii. That the Honourable Court be pleased to stay execution of the Ruling of the Honourable Magistrate delivered on the the 30th day of October 2024 in Milimani MCELRC No. E1649 of 2022 or the suit appealed against in this matter pending the hearing and determination of the Application.
  - iv. That the Honourable Court be pleased to stay execution of the Ruling of the Honourable Magistrate delivered on the the 30th day of October 2024 in Milimani MCELRC No. E1649



of 2022 or the suit appealed against in this matter pending hearing and determination of the intended Appeal.

- v. That the Honourable Court to grant leave for the filing of this Appeal out of time and the Appeal herein be allowed as file within time.
  - vi. That the costs of the Application be provided for.
2. The instant Application was based on the grounds on the face of the application and was further supported by the affidavit of Claire Muthoni Wanjiru sworn on 5<sup>th</sup> December 2024 who averred that the Honourable Court in Milimani MCELRC No. E1649 of 2022 delivered a Ruling on the 30th day of October 2024 dismissing the Appellant's Objection Proceedings and holding that the Appellant should pay the decretal amount in the said suit. The Appellant further averred that the Ruling was made without any legal basis as the Appellant was neither a Party to the suit nor was it in existence when the acts claimed in the suit occurred. Further, it was averred that should execution ensue, the Appellant stands to suffer irreparable loss, damage, harm and prejudice. The Appellant contended that the 1st Respondent had already applied for warrants and may execute at any time and the Appellant is dissatisfied with the Ruling has lodged an Appeal.
  3. The Appellant averred that it was yet to receive a copy of the Ruling of the Honourable Court despite applying for the same and it had never been uploaded on the CTS. The Applicant was apprehensive that its appeal which it asserted had very high chances of succeeding will be rendered nugatory unless the Court granted the Applicant orders for stay of execution pending hearing and determination of this Application as well as the intended Appeal. The Applicant stated it was ready and willing to provide a bank guarantee as security for stay of execution pending the determination of the Appeal or such other security as the Honourable Court may direct.

## Response

4. The application was opposed by the 1<sup>st</sup> Respondent vide its Replying Affidavit sworn by the 1<sup>st</sup> Respondent on the 24<sup>th</sup> January 2024. The 1<sup>st</sup> Respondent averred that following the trial court Judgment, the 1<sup>st</sup> Respondent/Decree holder instructed its auctioneers to issue warrants of attachment dated 18<sup>th</sup> July, 2024 against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent's property at their offices located along Muthithi Road in Westlands clearly branded "M & G Stationery". Subsequently, Appellant/Applicant filed objection proceedings at the trial court alleging that the attached property belonged to them. The Trial Court, not satisfied with the Appellant's application went ahead to dismiss the application vide a Ruling dated 30<sup>th</sup> October, 2024. The 1<sup>st</sup> Respondent averred that the Applicant has a business relationship with the 2<sup>nd</sup> Respondent as its distributors of M & G stationery products which fact was confirmed by the Appellant itself.
5. The 1<sup>st</sup> Respondent further averred that the 2<sup>nd</sup> Respondent was hiding behind a proxy company, the Appellant, in order to avoid paying the decretal sum and stall the execution process and deny it the fruits of its judgment. The 1<sup>st</sup> Respondent contended that the Appeal has been filed out of time therefore, there is no appeal granting this court jurisdiction therefore, the application is incompetent. Further, it is claimed that the Appellant/Applicant has not fulfilled the conditions for a grant of a stay as espoused under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010 and urged the Court to deny granting the said orders.

## Decision

6. The application was canvassed by way of written submissions with the parties complying.



7. The Appellant/Applicant submitted largely on whether it has met the conditions espoused under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010 as its issues for determination.
8. The Respondent on the other hand, submitted the following issues for determination:
  - i. Whether there is a valid record of Appeal;
  - ii. Whether the Order appealed from was a negative order;
  - iii. Whether the conditions for stay of execution have been met
9. The court having perused the pleadings and written submissions of the parties was of the considered opinion that the issues for determination in the ruling were as follows: -
  1. Whether the application for stay of execution was merited.
  2. Whether the application for grant of leave of filing appeal out of time and the filed appeal be allowed as filed within time was merited.
  3. Whether the application for stay of execution was merited.

## **Decision**

### **Appellant's submissions**

10. The Appellant submitted that the principles governing the granting of a stay of execution are well established under Order 42 Rule 6 of the Civil Procedure Rules, which provides as follows:
 

"(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order."

  5. Rule 6 (2) further stipulates that the Applicant must satisfy the certain conditions for the grant of a stay of execution pending Appeal. The said Rule provides as follows: -"(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 Applicants 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 Applicants".
11. The appellant submitted that it had an arguable appeal with a high probability of success. The Appellant contended that it was not a party to the initial proceedings and, importantly, was not in existence when the acts claimed in the suit occurred. This presents an arguable issue of law and fact, which justifies the need for a stay of execution pending the Appeal. Once the Applicant has demonstrated that it has an arguable appeal it follows that the Court can now consider the substantial loss likely to be occasioned. The Appellant's contention that it was not a party to the suit and was not in existence at the time the events occurred raises substantial legal issues that need to be resolved at the Appellate level.
12. The Appellant asserted it will suffer irreparable harm and substantial loss if the stay is not granted. The decree in the Magistrate's Court provides for execution against the Appellant, despite the fact that it was not a party to the suit. The Appellant's argument that the Appeal will be rendered nugatory



unless the stay is granted is founded on the likelihood that the 1st Respondent would not be in a position to refund any sums paid if the Appeal succeeds. In its supporting affidavit, the deponent has deponed as follows:- "14. THAT I verily believe that if a stay of execution is not granted and the decretal amount is paid to the 1st Respondent then the Appellant shall be unable to get it back as the 1st Respondent has no known assets." The 1st Respondent had not rebutted this averment in its Replying Affidavit and this is a classic example of the kind of situation where the Court has discretion to grant a stay, as emphasized in *Danros (K) Limited & another v Murtaza Adaamjee* [2021] eKLR where the Court held thus: "An application under Order 42 Rule 6 Of the Civil Procedure Rules stands or falls on the key considerations of substantial loss and security. As stated in the *Shell* case, substantial loss is the cornerstone of the jurisdiction under Order 42 Rule 6 of the Civil Procedure Rules and the decree holder should not be kept away from the fruits of his judgment without just cause. "In the *National Industrial Credit Bank Ltd v Aquinas Francis Wasike and Another* [2006] eKLR the Court of Appeal stated that: "This court has said before and it would bear repeating that while the legal duty is on an Applicants to prove the allegation that an appeal would be rendered nugatory because a respondent would be unable to pay back the decretal sum, it is unreasonable to expect such Applicants to know in detail the resources owned by a respondent or the lack of them. Once an Applicant expresses a reasonable fear that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge - see for example Section 112 of the *Evidence Act*, Chapter 80 Laws of Kenya." In this case, the Appellant will suffer irreparable loss, as the enforcement of the decree would defeat the very purpose of the Appeal, particularly given the potential inability of the 1st Respondent to refund the amounts paid should the Appeal succeed.

13. On security of decree, the Appellant had expressed its willingness to provide security for the due performance of the decree as may be directed by the Court, including the provision of a bank guarantee or any other security deemed appropriate. This satisfies the requirement under Order 42 Rule 6(2) of the Civil Procedure Rules, which permits the Court to impose conditions of security as it may deem fit. In the case of *JAMES WANGALWA & ANOTHER V AGNES NALIKA CHESETO* [2012] eKLR it was held as follows:- "18. I agree with the respondent that the Applicants have not offered or proposed any security for the due performance of the decree of the lower court. This should be done as a sign of good faith that the Applicant is ready and willing to commit to giving security. But my reading of order 42 rule 6(2) (b) of the CPR reveals that, it is the court that orders the kind of security the applicant should give as may ultimately be binding on the applicant. This modeling of the law is to ensure the discretion of the court is not fettered."
14. On delay, the applicant submitted that the application has been made without any undue delay . The application herein was filed on the 11th April, 2011 which is barely 12 days from the date when the Applicant's application for stay was dismissed by the lower court, i.e. 31st March 2011. The rest of the time that lapsed between the date of the decree and when the application for stay was dismissed the lower court has been explained by the legal processes that were undertaken then."
15. The Appellant also seeks leave to file its appeal out of time. The Appellant submitted that although the appeal was initially lodged within the prescribed time, the delay in payment, caused by technical issues with the MPESA system, led to a delay in effecting the payment. The payment was ultimately made on the 30th day of November 2024, outside the 30-day window allowed for filing the Appeal. In *Sokoro Savings and Credit Co-operative Society Ltd v Mwamburi* (Civil Application E032 of 2022) [2023] KECA 381 (KLR), the Court held that: "Where a party has good cause for delay in filing an appeal, the Court has the discretion to extend time and grant leave for filing the appeal out of time." "The delay cannot therefore be said to be inordinate in the circumstances. In my view, the explanation tendered by the applicant is plausible and sufficient considering the delay period was only 43 days.



Additionally, I note that the delay occasioned was as a fault of the advocate in the conduct of the matter and the applicant cannot be blamed for the delay. Without evidence to the contrary, I am unable to find carelessness in the actions of the applicant hence the explanation offered for the delay is sufficient." The Appellant submitted that the delay was due to circumstances beyond its control and that no prejudice will be suffered by the Respondent if the extension is granted. The Appellant further submits that this delay was caused by an issue with the MPESA payment system to the Judiciary, which was an unforeseen event that the Appellant could not have reasonably anticipated.

### **Respondent's submissions**

16. The Respondent contended that the Ruling appealed against was regular and the Appellant/Applicant herein, who is the Objector, instead of only trying to prove that they are the owner of the attached goods, is trying to differ with the merits of the original judgement which they were not party to and which the 2nd & 3rd Respondents never appealed against. This only proves further the interconnectedness between the Appellant/Applicant and the 2nd & 3rd Respondents, hence the Appeal filed herein and the application for stay are frivolous and vexatious. On the basis of the above stated Order 42 Rule 6(2) of the Civil Procedure Rules 2010 the Appellant/Applicant herein has not met the conditions for grant of orders of stay of execution and the same should be denied. The Appellant's appeal was filed out of time hence there is no appeal to give this court jurisdiction. This has been admitted by the Appellant/Applicant in their application. An application for stay under Order 42 rule 4 of the Civil Procedure Rules 2010 can only be entertained if there is a valid appeal, hence in the current position, the application is incompetent, and should be struck out with costs. The ruling appealed from was delivered on 30th October, 2024. The Appellant had until 29th November, 2024 to file the appeal, but they ended up paying for the Appeal filed, on 30th November, 2024 which was a day late. In the case of *Githau v Kagiri & another (Civil Appeal 314 of 2023) [2024] KEHC 6320 (KLR) (6 June 2024) (Ruling)*, the Court stated as follows: "The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others [2014] eKLR* enunciated the principles applicable in an application for leave to appeal out of time..." "...In my view, the applicant has not given any plausible reasons for the delay in filing the appeal..." "...I have perused the intended Memorandum of Appeal and the judgment of the trial court and noted that the appeal does not raise pertinent issues of law. As such, the appeal cannot be said to be arguable. Having found that the applicant has not satisfied the requirements of extension of time to appeal and that he has failed to meet the threshold for grant of stay pending appeal, I reach the conclusion that this applicant must fail. Accordingly, it is my considered view that the application dated 29th June 2023 lacks merit and is hereby dismissed with costs..." In the *Salat* case cited above, the Supreme Court in striking out an appeal filed out of time stated as follows: "... counsel for the applicant acknowledged having already filed his appeal. He now prays for extension of time and urges that once so granted, the Petition of appeal already filed be deemed to have been duly filed. What we hear the applicant telling the Court is that he is acknowledging having filed a 'document' he calls 'an appeal' out of time without leave of the Court. Pursuant to rule 33(1) of the Court's Rules, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under rule 53 of the Court's Rules, this Court can indeed extend time. However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires. By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such 'an appeal', is tantamount to moving the Court to remedy an illegality. This, the Court cannot do. To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the 'document' so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court." In this case the Appellant/



Applicant filed the appeal out of time and then seeks leave to have the same appeal be allowed out of time. No evidence has been produced by the Appellant to prove the alleged cause of the delay in terms of any letter written to the Court or a failed MPESA transaction. The Appeal is therefore a nullity and the application herein is incompetent as there is no valid appeal.

17. The Respondent further contended that before the court was a negative order. The order appealed from was delivered on 30th October, 2024 where the Appellant/Applicant's application as objector was dismissed by the Court. This was a negative order and thus stay of execution should not be granted. In the case of *Chege v Gachora (Civil Appeal 265 of 2023)* [2024] KEHC 1994 (KLR) (29 February 2024) (Ruling) the Court stated as follows:- "...Similarly in Kenya Commercial Bank Limited v Tamarind Meadows Limited & 7 Others [2016] eKLR the Court of Appeal expounded on stay of execution stating:- In *Kanwal Sarjit Singh Dhiman v Keshavji Juvraj Shah* [2008] eKLR the Court of Appeal while dealing with a similar application for stay of a negative order, held as follows:- The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December 2006. The order of 18th December 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only. The same reasoning was applied in the case of *Raymond M. Omboga v Austine Pyan Maranga* (supra) that a negative order is one that is incapable of execution, and thus, incapable of being stayed. This is what the Court had to say on the matter:- "The order dismissing the application is in the nature of a negative order and is incapable of stay of execution, save perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is incapable of execution, there can be no stay of execution of such an order....The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise..." "In light of the above, the order being a negative order which did not order any of the parties to do anything or restrain from doing anything is incapable of execution and thus the court cannot order stay of execution of that negative order." "...Granting stay in this matter would lead to further delay and inconvenience to the respondent who requires to enjoy the fruits of his judgment. It is trite law that litigation must come to an end and thus it would be more prejudicial to the respondent if the orders of stay are granted."
18. The Respondent urged that the principles upon which the court may stay the execution of orders appealed from are well settled. Order 42 Rule 6 of the Civil Procedure Rules stipulates:- "No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside." "No order for stay of execution shall be made under sub rule 1 unless:- a. The Court is satisfied that substantial loss may result to the 1st 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." Thus under Order 42 Rule 6(2) of the Civil Procedure Rules, an Applicant should satisfy the court that:
  - i. Substantial loss may result to him unless the order is made;
  - ii. That the application has been made



without unreasonable delay; and iii. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him. An applicant must clearly state what loss, if any, they stand to suffer. In the case of Machira t/a Machira & Co Advocates v East African Standard [2002] eKLR the learned Judge stated as follows: “I have not found it necessary to consider the requirement of security for due performance in this case, because the application is failing. The application is failing because the applicant merely repeats the words of rule that substantial loss will be suffered, but does not set out factual particulars of the kind of loss that might be suffered. The application comes late, without a good reason. This is a fit case for the ordinary principle to apply. There is nothing to bring it within the exception. In justice and fairness the plaintiff should be allowed to move on. If the appeal is successful, what is done here will be undone without serious or any prejudice to any party. We do not know what the assessment of damages may bring. So there is no basis on which one can speak of loss of a substantial nature. For these reasons, the application is dismissed with costs.” The Appellant/Applicant had not enumerated the particulars of substantial loss they may suffer if stay is not granted. No evidence has been adduced to prove the assertions.

19. On whether the application has been made without unreasonable delay the respondent submitted:- . The Ruling appealed from was delivered on 30th October, 2024 and stay was granted for a period of thirty days. The instant application has been filed in an appeal that was filed out of time by one day. During that time, the 1st Respondent obtained fresh warrants of attachment against the 2nd & 3rd Respondent. There was thus delay in filing the application.
20. On the condition of Security of costs the Respondent relied on the decision in the case of Githau v Kagiri & another (Civil Appeal 314 of 2023) [2024] KEHC 6320 (KLR) (6 June 2024) (Ruling) the Court stated as follows: “The purpose of security was explained in the case of Arun C. Sharma vs Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others [2014] eKLR where the court stated:- “The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.....Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 Rule 6 of the Civil Procedure Rules acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.” The Appellant/Applicant has not deposited any amount as security for the decree and hence this condition has not been met. If in any case stay is granted, the decretal amount should be deposited in full in an interest-earning account jointly held with the 1st Respondent.
21. The 2nd Respondent had branches and shops all over Nairobi city and the 1st Respondent should be allowed to execute the decree at any of the branches which are clearly branded “M & G Stationery.” The Appellant/Applicant’s name does not appear at any of the branches. Execution will be against the 2nd & 3rd Respondents as per the original judgement and the Appellant/Applicant is not a party to it. It is noteworthy that the lawyers for the Appellant/Applicant and the 2nd Respondent often appear on behalf of each other from the Magistrate’s court to presently at this Honourable Court and usually hold the same position. Even the e-mail address used by the Appellant in registration of this appeal on the portal (Bplct@wanam.com) has a similar domain to the 2nd Respondent’s lawyer’s email. This clearly shows that there is collusion by the Judgement Debtor (2nd Respondent) and the Objector (Appellant/Applicant) to defeat the execution process. They are one and the same. The application by the Appellant/Applicant lacks merit. We ask the Honourable Court to dismiss the Appellant/Applicant’s application with costs to the 1st Respondent and allow execution to proceed.
22. In the instant case the Court established that the Memorandum of Appeal was initiated into the Judiciary e-filing system on 29<sup>th</sup> November 2024 (which was within the court rules filing timeline of 30



- days)but paid for on the 30<sup>th</sup> November 2024 at 7.39 am well outside the 30 days of ruling delivered on 30 October 2024. According to Section 20 of the *Employment and Labour Relations Court Act* the court is to handle cases without undue regard to technicalities. Rule 18 of Court Rules (2024) the court may extend time. In the instant case the appeal was lodged in the e-filing system on the 29<sup>th</sup> of November, 2024 and payment was done the next day at 7.39 am. The applicant stated the reason for delayed payment was MPESA challenge in making payment to Judiciary. In the Case Tracking System the payment was reflected.
23. The Court took judicial notice that the e-filing system comes with own challenges including internet challenges. The court looking into the issue and applying the reasonable man test found that this case was distinguished from Salat case for the fact that the applicant initiated filing of the appeal on time but there was a delay of less than 24 hours in making payment. The applicant raised defence of MPESA challenge in making payment. The Court returned that this case could be classified as technicality under section 20 of the *Employment and Labour Relations Court Act*. The court has the power to enlarge the time for filing appeal under Rule 18 of Court Rules. For that reason, the court finds in favour of exercising discretion to extend time for filing of the appeal and deems the appeal lodged timely but paid outside the 30 days by hours as duly filed.
24. The court perused the filed pleadings and documents in length. The applicant filed documents to prove that M&G stationery does not exist as a legal entity. Further indeed the applicant was incorporated on the 16<sup>th</sup> of December 2022. The applicant vide affidavit of 24<sup>th</sup> July 2024 produced evidence of rent payment for the premises where proclamation was done. An arguable case has been disclosed in the intended appeal and the court is guided to sustain an appeal as stated by Court of Appeal in Butt v Rent Restriction Tribunal e KLR 1979, that- ‘It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in Wilson v Church (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458:
- “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.” In the instant case, if the stay is not granted, the execution may proceed against the proclaimed goods. In the event the appeal is successful, the same will be rendered nugatory. The court then found the grant of stay was necessary.
25. The objector has laid basis before the court to effect that it was not a party to the suit, M&G stationery was not a legal entity and that indeed the rented premises belonged to the applicant as per the rent payment. The Court returned that issue of security for performance can thus not arise against the objector/appellant while the actual employer was still in existence and nothing stopped the Respondent from executing against the 3<sup>rd</sup> respondent, the actual employer , while the appeal is pending.
26. The court on prima facie basis, while appreciating the general jurisprudence on a negative order as submitted by the respondent, finds that the failure to grant orders sought by applicant left the objector vulnerable to the execution on its goods for association with MG stationery, as a distributor per the agreement to sell the products. The stay of execution specifically against its goods under the rented premises is justified. The execution can always proceed against the 3<sup>rd</sup> respondent, the actual employer, who was a party to the suit.
27. In the upshot the application is allowed as follows:-



- a. That the Honourable Court is pleased to stay execution of the Ruling of the Honourable Magistrate delivered on the 30th day of October 2024 in Milimani MCELRC No. E1649 of 2022 as against the applicant's rented premises and goods therein pending hearing and determination of the intended Appeal.
  - b. That the Honourable Court is pleased to grant leave for the filing of this Appeal out of time and the Appeal herein be and is Deemed as filed.
  - c. Costs in the cause.
28. The court directs that the record of appeal be filed in 45 days.
  29. Mention for disposal directions on the 5<sup>th</sup> May 2025.
  30. It is so Ordered.

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

**J.W. KELI,**

**JUDGE**

In the presence of

Court Assistant: Otieno

Appellant : -Absent

1<sup>st</sup> Respondent: Akinyi – Notice to issue

