



**Cheriez Properties Limited v Cheburet & another (Appeal E002 & E003 of 2024
(Consolidated)) [2025] KEELRC 725 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 725 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E002 & E003 OF 2024 (CONSOLIDATED)**

**B ONGAYA, J
MARCH 7, 2025**

BETWEEN

CHERIEZ PROPERTIES LIMITED APPELLANT

AND

BEATRICE CHEPKOECH CHEBURET 1ST RESPONDENT

GEORGE BARASA NYANGWESO 2ND RESPONDENT

*(Being an appeal from the ruling and orders of the Hon. B. Ojoo,
Senior Principal Magistrate in ELR Cause No.160 of 2023 at Mavoko)*

RULING

1. The appellant filed in, both appeals, respective applications by the notice of motion dated 25.01.2024 through OG Law LLP. It was under section 12(3) of the Employment and *Labour Relations Act*, rule 17(1) and (7) of the Employment and Labour Relations Rules. The prayer is for an order of the Court staying the ruling of Hon. B. Ojoo dated 11.01.2024 ordering that status quo ante be preserved pending the hearing and determination of the appeal; and, costs of the application be provided for. The application was based upon the attached supporting affidavit of Cynthia Adolwa sworn on 25.01.2024 and upon the following grounds:
 - a. The respondent was employed by the applicant from 04.01.2021 for a contract of one year which contract was later renewed on the 05.01.2023 to 04.01.2023.
 - b. The respondent was found culpable of gross misconduct following loss of timber worth Kshs.131,936.00 after a disciplinary hearing on 27.07.2023 leading to summary dismissal on 31.07.2023.
 - c. The respondent's salary for July 2023 of Kshs. 19, 800.00 was applied as a surcharge to the items that were lost under her supervision.



- d. If the applicant is made to pay the amount, the applicant has reasons to believe that the respondent will be unable to refund. There are no known respondent's assets from which the amount could be recoverable. The orders made by the trial Court that the money be paid amounted to summary determination of the suit at the interlocutory stage. The ruling by the trial Court delivered on 11.01.2024 and orders therefrom should be stayed.
2. It is submitted for the appellant that if stay orders pending appeal are not granted as prayed for, the applicant will suffer substantial loss as envisaged in Order 42 Rule 6(1) and (2) of the Civil Procedure Rules.
3. The respondents have not opposed the application. The Court considers that as submitted for the appellant, the alleged orders in the alleged trial Court's ruling appear to determine the dispute at an interlocutory stage free from hearing of the parties on the matters in dispute. The issues such as whether the dismissal was fair and whether the surcharge was valid or fair are all supposed to go to full hearing. Requiring the appellant to pay as per the said rulings would amount to substantial loss. The applications would be allowed with costs in the cause. However the applicant failed to exhibit the impugned rulings and orders flowing from the rulings

The applications are hereby disallowed with orders as follows:

- a. The prayer thus "There be stay of the rulings and orders by Hon. B. Ojoo in the two suits ordering that the status quo ante be preserved pending the hearing and determination of the appeals." is hereby declined as the rulings and orders in that respect have not been exhibited at all.
- b. The appeals are hereby consolidated and parties to fix a mention date for their expeditious determination with appeal E002 of 2024 as lead file.
- c. No costs of the applications.
- d. The case files as now consolidated be returned to the Machakos Sub-registry forthwith.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 7TH MARCH, 2025**

BYRAM ONGAYA

PRINCIPAL JUDGE

