



**Suhara Transport (K) Limited (Formerly Known as Primefuels (Kenya) Limited) v
Ndung'ani (Appeal E242 of 2024) [2025] KEELRC 783 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 783 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E242 OF 2024
M MBARŪ, J
MARCH 13, 2025**

BETWEEN
SUHARA TRANSPORT (K) LIMITED APPELLANT
FORMERLY KNOWN AS PRIMEFUELS (KENYA) LIMITED
AND
PAUL MULUNGWA NDUNG'ANI RESPONDENT

RULING

1. The appellant filed an application dated 19 December 2024 under Order 42 Rule 6 and Order 51 of the *Civil Procedure Rules* seeking orders that, pending the hearing and determination of the appeal herein, there be a stay of execution of the judgment and decree dated 17 October 2024 in Mombasa MCELRC No.E253 of 2021. The application is supported by Gift Buso Katama, human resource and administration manager, who aver that the trial court delivered judgment on 17 October 2024 in favour of the respondent with;
 - a. an award of Ksh.37,158 as service pay;
 - b. Ksh.78,031.80 as unpaid leave;
 - c. Ksh.1,092,466.96 as overtime pay;
 - d. Interests and costs.
2. Dissatisfied with the judgment, the appellant filed this appeal, but the respondent demanded payment of the judgment sum on 5 December 2024.
3. The trial court allowed a 30-day stay of execution, which has lapsed. Unless this court also stays execution pending the hearing and determination of the appeal, the respondent will execute the judgment.



4. There is an arguable appeal as the trial court failed to determine that the claims made by the respondent were time-barred, and a discharge voucher was executed on 16 September 2020. The respondent voluntarily executed the discharge voucher and did not plead misrepresentation or undue influence. There was the payment of Ksh.60, 112.68 and discharged the appellant from any liability. The awards made were not justified, noting termination of employment was under Section 44 of the *Employment Act*. To allow the appellant to urge its appeal, a stay of execution is necessary.
5. In reply, the respondent filed Grounds of Opposition, stating that the application is tainted with mala fides as it seeks untenable and hence vexatious orders. The appeal is fatally defective and filed by a non-party before the trial court, and there is no decree against the appellant to justify the grant of the orders sought. The application is meant to waste court time and deny the respondent the fruits of his judgment.
6. Both parties attended and filed written submissions and made highlights in court.
7. The main issue in contention by the respondent is the appellant's changing of name, which was not a party before the trial court. The appellant admitted that the decree was issued against Primefuels (Kenya) Limited, which has since changed its name to Suhara Transport (k) Limited. The appellant is a non-suited party to move the court, and the instant application cannot be issued.
8. The appellant asserts that there is a change of name and that the entity against which the judgment was issued is non-existent, which is needed in the appeal.
9. Indeed, there is no direct procedure for a name change once judgment has been delivered. However, good practice demands that upon change of name, the party against whom judgment is issued should return to the trial court to seek an amendment upon which the decree subject of the appeal is premised.
10. The appellant does not state when there was a change of name. Was it immediately upon delivery of judgment, during the proceedings or at what stage? An appeal can only lie against the party aggrieved by the trial court's orders. To proceed as the appellant has proposed, a procedure would be introduced where a third party, even if acting in good faith, would take over proceedings against a judgment debtor and proceed to assist such party in evading justice.
11. Upon the trial court's judgment on 17 October 2024, a good order demanded that the appellant move the trial court to amend the pleadings to introduce the aspect of change of name. This cannot be done at this point, as this will negate the basis and foundation of the decree and the appeal.
12. Under rule 11 of the *Employment and Labour Relations Court (Procedure) Rules*, the essence of an appeal is;

An appellant shall, before filing a memorandum of Appeals, appeal, request in writing from the court, person or body whose decision is under appeal copies of the proceedings, any documentary evidence relied on, and a copy of the judgment, ruling, decision, order, decree or award appealed against.
13. The essence of the appeal will be lost when the appellant seeks to introduce a change not factored in the Record of Appeal. The appellant is not barred from the court, save for return to the trial court, where the impugned judgment and decree issued are imperative.
14. To this extent, the respondent's objections are correct. There is no proper party to support the instant appeal. The appeal is struck out. The costs are to the respondent.

Orders accordingly.



DELIVERED IN OPEN COURT AT MOMBASA ON THIS 13TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

