



**African Marine and General Engineering Company Limited v Philip
(Appeal E234 of 2024) [2025] KEELRC 812 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 812 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E234 OF 2024
M MBARŪ, J
MARCH 6, 2025

BETWEEN
AFRICAN MARINE AND GENERAL ENGINEERING COMPANY LIMITED APPELLANT
AND
KANG'A JOB PHILIP RESPONDENT

RULING

1. The appellant filed an application dated 5 December 2024 seeking a stay of proceedings before the trial court in Mombasa CMELRC No.E273 of 2024 pending the hearing of the appeal against the ruling delivered on 28 October 2024. The ruling related to objections filed under the provisions of Section 89 of the *Employment Act*, where the subject suit is time-barred, and thus, the trial court is without jurisdiction to hear the claim.
2. The application is supported by the affidavit of Brenda Koech, the human resource manager, and because the respondent filed his suit before the trial court on 9 May 2024 out of time and contrary to Section 89 of the *Employment Act*. The ruling delivered on 28 October 2024 erroneously held that the suit had been filed on 3 May 2024. Aggrieved, the appellant has filed this appeal, and to secure the same, this application must stay in proceedings before the trial court pending the hearing and determination of the appeal.
3. The appellant has filed and served the appeal, and unless the same is heard and determined first, the trial court will proceed and render a judgment before the question of jurisdiction and the claim filed out of time are addressed under this appeal. Unless the orders sought are granted, the appellant will suffer substantial loss and damage and render the appeal nugatory.
4. In reply, the respondent filed his Replying Affidavit and averred that upon filing his suit dated 3 May 2024, the appellant filed a Notice of Preliminary Objections dated 21 June 2024, raising the question



of jurisdiction and that the suit was time-barred. The trial court rendered the ruling on 28 October 2024 and held that the suit was filed on 3 May 2024 within time. Hence, the objections were dismissed, allowing the respondent to prosecute his case.

5. The respondent avers that parties have complied with Order 11 of the *Civil Procedure Rules*. The stay of proceedings is not justified as there is no cause of action in law or fact to justify such an order. The balance of convenience favours the respondent, who will suffer loss and damage if his case is not heard expeditiously.
6. The appellant has failed to make a case that the stay of proceedings will meet justice. Such an order is a grave judicial action that should only be issued in special circumstances, as it interferes with the right to be heard.
7. The respondent avers that the appeal has no chance of success and that the suit was filed before the trial court in time. The application is filed in bad faith and should be dismissed to allow the respondent to prosecute his case.
8. The sole issue for determination herein is whether the court should stay proceedings before the trial court pending the appeal hearing.
9. Indeed, as submitted by the respondent, the stay of proceedings is a serious, grave, and fundamental judicial action that interferes with any party's right to conduct litigation. It impinges on the right of access to justice, the right to be heard without delay, and the right to a fair trial 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). The stay of proceedings should be exercised sparingly and only in exceptional cases.
10. In this case, the appellant raised objections to the trial court's jurisdiction to hear the claim because the suit was time-barred. The trial court dismissed this objection, which led to this appeal. The appellant has filed the Memorandum of Appeal and the Record of Appeal. The appeal raises serious questions of law on the application of Section 89 of the *Employment Act*, that the suit before the trial court is time-barred, and the issue of jurisdiction. The court must address these questions before the proceedings before the trial court can conclude. Determining the appeal will clarify and guide further proceedings before the trial court. With jurisdiction, the court should proceed; without jurisdiction, the court should stop. See *Makokha v County Government of Bungoma & 4 others* [2024] KECA 211 (KLR).
11. In these circumstances, the application dated 5 December 2024 is with merit; there shall be a stay of proceedings in Mombasa CMELRC No.E273 of 2024 to allow the court to hear the appeal. Costs to abide by the outcome of the appeal.

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

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

