



**Cyka Manpower Services v Nzuki & 9 others (Appeal E046 of 2024)  
[2025] KEELRC 1101 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1101 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E046 OF 2024**

**M MBARŪ, J  
APRIL 3, 2025**

**BETWEEN**

**CYKA MANPOWER SERVICES ..... APPELLANT**

**AND**

**MAKAU NZUKI ..... 1<sup>ST</sup> RESPONDENT  
FRANCIS MWASHUMA ..... 2<sup>ND</sup> RESPONDENT  
WILFRED WACHUGU ..... 3<sup>RD</sup> RESPONDENT  
BERNARD ATANDI ..... 4<sup>TH</sup> RESPONDENT  
MBUVI MWINZILA ..... 5<sup>TH</sup> RESPONDENT  
KEFFA OSUMBA ..... 6<sup>TH</sup> RESPONDENT  
RAYMOND KAI ..... 7<sup>TH</sup> RESPONDENT  
SAMUEL GARAMA ..... 8<sup>TH</sup> RESPONDENT  
PIUS MUEMA ..... 9<sup>TH</sup> RESPONDENT  
BEN SOKOBE ..... 10<sup>TH</sup> RESPONDENT**

**RULING**

1. The appellant filed an application dated 14 February 2025 under the provisions of Order 42, Rule 6 of the *Civil Procedure Rules*, seeking orders that the judgment delivered on 30 January 2025 be stayed to allow the appellant to file its intended appeal to the Court of Appeal.
2. The application is supported by Moses Mwaura, group administration manager, who avers that following the judgment on 30 January 2025, the appellant is aggrieved and intends to file an appeal. The respondents were awarded Ksh 1, 170,450; if allowed to execute, this will render the appeal



- nugatory. If the respondents are paid the judgment sum, they cannot be unable to refund upon a successful appeal. The respondents are not in any gainful employment and, hence, may be unable to repay the colossal judgment sum.
3. Mwaura also avers that the appellant has an arguable appeal and a high chance of success. The appellant had employed the respondents based on a third-party contract with Tata Chemical Magadi Limited, which ended, leading to the termination of employment. Despite the demonstration that the respondents' employment was linked to the third-party contract, the court proceeded to find unfair termination of employment, which will be addressed at the Court of Appeal.
  4. The appellant submitted that they are willing to abide by any conditions to deposit security for the judgment's due performance. Ten respondents' whereabouts are unknown. A security deposit will secure both parties pending the appeal's hearing.
  5. In reply, the respondents filed the Replying Affidavit of the 1st respondent, Makau Nzuki, who avers that the appellant's application is supported by a person who has no authority to file the affidavit. There is no company resolution of a letter of authority granted to the deponent; hence, the affidavit is irregular, making the application fatal.
  6. Execution of a valid judgment is legitimate. There are 10 respondents, and the Ksh.1, 170,450 award is not colossal as alleged. The appeal as advanced is not arguable. The respondents were not privy to the third-party contract between the appellant and Tata Chemical Magadi Limited, and where such an agreement subsisted, they were not parties to it. Employment was between the appellant and the respondents, who had a duty to follow the law before termination of the employment relationship.
  7. Nzuki avers that the appellant has not demonstrated that they cannot refund the judgment sum if paid pending the appeal's hearing. Being indigent is not sufficient cause to deny the respondents the fruits of their judgment. Sufficient cause has not been established on which the orders sought can be issued, and on this basis, the application should be dismissed with costs.

**Both parties attended and made oral submissions.**

8. The court has analyzed the affidavits, and the issue for determination is whether the judgment herein should stay pending the hearing and determination of the appellant's intended appeal to the Court of Appeal.
9. A party aggrieved by the judgment and orders of the court has a right of appeal. An intention to appeal is not an appeal. The Notice of Appeal filed herein demonstrates the intention to appeal, which has not been actualized. However, a draft of the Memorandum of Appeal is attached to the application. On this basis, the appellant should be allowed to urge its appeal as a matter of right as held in *Ngei v Kibe & another* [2021] KECA 243 (KLR). Whether the intended appeal has merit or not, this is not the role of this court, having delivered judgment on 30 January 2025 as held in the case of *Imperial Bank Limited (In Receivership) & another v Alnashir Popat & 18 others* [2018] KECA 685 (KLR).
10. The respondents have rights, too! They hold a valid judgment subject to execution. They should not be denied the fruits of their judgment based on the appellant's intentions to file an appeal. The appellant's arguments that the respondents have no known means to refund the decretal sum and that the judgment sum is colossal are not justifications for denying the respondents the fruits of the judgment. Indigence is not a crime; such a person enjoys equal protection under the law.
11. A conditional stay will be issued after balancing each party's rights. The appellant has demonstrated its intention to appeal, and the respondents possess a valid judgment.



12. Accordingly, stay of execution is hereby allowed on the following conditions;

13.

- a. The appellant shall deposit the judgment sum of Ksh. 1,170,450 in court within the next 14 days, closing on 21 April 2025;
- b. The appellant shall serve the filed appeal upon the respondents within the next 30 days, closing on 5 May 2025;
- c. Where there is no compliance above (a), the stay order shall lapse;
- d. Where there is no compliance (b) above, the deposit shall be released to the respondents.
- e. Costs are hereby awarded to the respondents.

**DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Davies Wekesa

