



**Kenya Institute of Management v Ogola (Appeal E080 of 2024)
[2025] KEELRC 1467 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1467 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E080 OF 2024
NZIOKI WA MAKAU, J
MAY 12, 2025**

BETWEEN

KENYA INSTITUTE OF MANAGEMENT APPLICANT

AND

MOSES RAPHAEL OGOLA RESPONDENT

RULING

1. Through an application dated 14th February 2025, the Appellant seeks stay of execution of the judgment in Kisumu CMELRC No. E256 of 2022, pending the hearing and determination of this appeal. In support of the application, the Appellant contends that the appeal raises arguable issues with high chances of success. It expresses concern that unless stay of execution is granted, the Respondent would proceed to enforce the judgment, thereby rendering the appeal nugatory. To demonstrate good faith, the Appellant indicates that it is ready to deposit a portion of the decretal sum or to comply with any other conditions the Court might deem appropriate for securing the due performance of the decree. The Appellant further emphasizes that it would suffer substantial loss if stay is not granted, maintaining that allowing the application would best serve the interests of justice.
2. In response, the Respondent filed a replying affidavit dated 17th February 2025. He depones that the Appellant should be compelled to deposit the entire decretal amount either in Court or in a joint interest-earning account. He further contends that the appeal amounts to an abuse of the court process and urges the Court to dismiss the application with costs.
3. By way of rejoinder, the Appellant filed a further affidavit dated 20th February 2025, asserting that the application had been brought in good faith. Regarding the Respondent's demand for deposit of the entire decretal sum, the Appellant explains that it is a learning institution reliant on budgetary allocations for various programs, and that its operations would be severely hampered by such a requirement. It affirms that it is only able to deposit Kshs. 300,000/- without paralyzing its activities.



4. Pursuant to directions on disposal of the appeal by way of written submissions the Appellant filed submissions on 3rd April 2025 while the Respondent filed submissions on 4th March 2025.

Appellant's Submissions

5. The Appellant submits that the decretal sum of Kshs. 1,208,000/- is substantial and that allowing execution to proceed would expose it to significant financial loss. It further contends that there is no assurance it would be able to recover the said amount from the Respondent should the appeal ultimately succeed. On the question of delay, the Appellant submits that the application was filed on 14th February 2025, shortly after the judgment was delivered on 5th December 2024. It asserts that this timeline does not amount to undue delay, particularly given that the Court proceeded on vacation soon after the judgment, and it's counsel's chambers remained closed until the third week of January 2025.
6. With respect to the requirement for depositing the entire decretal amount, the Appellant maintains that doing so would cripple its operations. It emphasizes that, as a learning institution, it operates on structured budgets allocated to specific programs and activities, making such a financial demand untenable. It reiterates that it can only comfortably afford a partial deposit of Kshs. 300,000/-.
7. In light of the above, the Appellant urges the Court to exercise its discretion in its favour. It further submits that, considering the Court's well-recognized efficiency in handling appeals, the Respondent stands to suffer no prejudice should the application be allowed.

Respondent's Submissions

8. In his submissions the Respondent identifies two key issues for determination:
 - a. Whether an order for stay of execution should issue against the judgment and decree dated 5th December 2024;
 - b. Who should bear the costs of this application.
9. On the first issue, the Respondent relies on Order 42 Rule 6(2) of the *Civil Procedure Rules*, which provides that the court must be satisfied that: (i) substantial loss may result if the stay is not granted; (ii) the application has been brought without unreasonable delay; and (iii) the applicant has provided security for the due performance of the decree. To reinforce this position, the Respondent cites the case of *Halai & another v Thornton & Turpin* (1963) Ltd [1990] eKLR, where the Court in addition to Order 42 Rule 6(2), emphasized the need for the applicant to demonstrate that the intended appeal would be rendered nugatory if stay of execution is not granted.
10. With respect to the requirement for security, the Respondent submits that the Appellant should be ordered to deposit the entire decretal amount in a joint interest-earning account. He asserts that the Appellant, being a well-established institution with branches countrywide, is financially capable of doing so. He maintains that the rationale of depositing the decretal amount is to ensure the funds are readily accessible in the event the appeal is unsuccessful, relying on the decision in *G.N. Muema T/A Mt. View Maternity & Nursing Home v Miriam Maalim Bisbar & another* [2018] eKLR. On the issue of delay, the Respondent submits that the application was not filed timeously. He notes that the period between the delivery of the judgment on 5th December 2024 and the filing of the application on 14th February 2024 is lengthy and unexplained, amounting to inordinate delay. Overall, the Respondent urges the Court to be guided by the reasoning in *RWW v EKW* [2019] eKLR, which held that the purpose of stay of execution is to preserve the subject matter of the appeal, ensure that the right of appeal is not rendered illusory, and protect both parties from suffering prejudice that cannot



be compensated by an award of costs. On the second issue, the Respondent submits that the costs of this application should be borne by the Appellant.

11. The issue for determination is whether a conditional stay may be granted by the Court. It is clear the factors for consideration in such a case are these:
 - i. substantial loss may result if the stay is not granted;
 - ii. the application has been brought without unreasonable delay; and
 - iii. the applicant has provided security for the due performance of the decree.
12. The decretal sum is slightly over 1.2 million shillings. The Appellant proposes to deposit Kshs. 300,000/- to satisfy the requirements of the law in regard to security. It asserts the entire decretal sum is too large and as a learning institution it shall be handicapped should it be required to deposit the entire sum. The Court is persuaded that there would be substantial loss if the stay were not granted and the Appellant was to succeed in the appeal. As such one of the grounds for the grant of stay has been met. However, the Court is not persuaded that the deposit of a sum of Kshs. 300,000/- would suffice to meet the requirements of the third limb of the matrix for determination as to whether the conditions for grant of stay are met. In relation to the same, the Court is persuaded by precedent that a deposit of the sum in an joint interest earning account would be sufficient for the securing of the decretal sum as both the Appellant and the Respondent would not suffer loss since the funds will have earned interest and not merely lie in a Court deposit where no interest is earned.
13. The foregoing is sufficient to show a grant of stay is merited. However, it shall be on condition. In my considered view, the following orders commend themselves to grant:
 - a. Stay granted on condition that the entire decretal sum is deposited in a joint interest earning account to be held by the Advocates on record. The said deposit be made within 30 days of today failing which the stay granted stands vacated.
 - b. Costs shall abide the outcome of the appeal.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 12TH DAY OF MAY 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

