



**Mwarania v Cabinet Secretary National Treasury and Planning & another;  
Kenya Reinsurance Corporation Limited (Interested Party) (Petition  
E034 of 2023) [2025] KEELRC 1349 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1349 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E034 OF 2023**

**NJ ABUODHA, J  
MAY 9, 2025**

**BETWEEN**

**JADIAH M MWARANIA ..... PETITIONER**

**AND**

**CABINET SECRETARY NATIONAL TREASURY AND PLANNING .... 1<sup>ST</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA REINSURANCE CORPORATION LIMITED ..... INTERESTED PARTY**

**RULING**

1. The Petitioner filed application dated 23<sup>rd</sup> September, 2024 which is brought under section 12 of the [Employment and Labour Relations Court Act](#), and Order 42 Rule 6 of the Civil Procedure Rules.
2. The Petitioner is seeking for orders that pending the hearing and determination of this application and the intended appeal there be an order of stay of Ruling/Decree delivered on 6<sup>th</sup> September, 2024 by Honourable Fredrick Nyamora in this Petition with costs being in the intended appeal.
3. The application was supported by the grounds set out on the face of the application herein and the Affidavit of JADIAH M. MWARANIA the Petitioner herein who averred that he instructed the firm of J.A Guserwa & Co. Advocates to file this Petition upon his unfair termination where this court delivered a judgment on 18<sup>th</sup> October, 2023 and dismissed his Petition in its entirety for lack of evidence and awarded costs to the Respondents.
4. The Petitioner averred that being dissatisfied with the Judgment he instructed his advocates to file an appeal. Counsel filed Memorandum of Appeal dated 22<sup>nd</sup> November, 2023 together with a



letter requesting for certified typed proceedings. That following the Judgment the Interested Party/ Respondent filed their Advocate Bill of Costs dated 6<sup>th</sup> February, 2024 where through his advocates he opposed the same bill.

5. The Petitioner averred that on 6<sup>th</sup> September, 2024 Hon. Fredrick Nyamora delivered his ruling on the Bill of Costs in which he taxed the bill at Kshs 425,000/=. That the court should allow the application for stay of the said ruling so that his Appeal is not rendered nugatory should execution be effected. That he will suffer substantial loss if stay of execution against the payment of the costs is not granted. That he has an arguable Appeal as per the Memorandum of Appeal. That the application has been made without undue delay.
6. In reply the Interested Party/Respondent filed its grounds of opposition dated 4<sup>th</sup> November, 2024 opposing the Petitioner's application stating that:
  - a. The application was frivolous, incompetent and misconceived hence an abuse of court process.
  - b. The application was made to deny the Respondent the fruits of its judgment.
  - c. The Applicant has not challenged the taxation process nor the resulting certificate of taxation issued by the taxing officer.
  - d. The requisite conditions for grant of an order of stay have not been met.
  - e. The Applicant had not proved any substantial loss that may result in the event the stay orders sought are not granted.
  - f. The Applicant has not proved that costs awarded will not be recovered from the Respondent in the event the Appeal succeeds.
  - g. The Applicant did not offer any security for costs.
7. The Application was disposed of by written submissions.

### **Petitioner's Submissions**

9. The Petitioner through his Advocates J.A Guserwa & Company Advocates filed his written submissions dated 23<sup>rd</sup> January, 2025 and on the issue of whether the Petitioner had satisfied the criteria for stay of execution counsel submitted on the factors to consider in an application for stay including substantial loss, application being made without unreasonable delay and security for costs.
10. Counsel submitted that the power to grant an order for stay of execution was discretionary in nature and the court had the power to grant the same. That the Petitioner stood to suffer irreparable loss if the orders were not granted since the Interested Party will proceed to execute the order for costs. That the substantial sum of Kshs 425,000/= of the taxed costs ought to wait for the outcome of the intended appeal which has high chances of success and has attached the draft memorandum of appeal. That the Petitioner was ready to secure the judgment sum as may be directed by the court.
11. Counsel urged the court to be guided by the cases of ELRC NO. 518 of 2011, Peter Njoroge Ndung'u v Board of Directors of David Sheldrick Wildlife Trust and Philip Mutinda v Lady Lori(K) Limited cause No 1104 of 2016 on the factors the court considers in an application for stay of execution.

### **Interested Party's/respondent's Submissions**

12. The Interested Party Through Its Advocates J.k Kibicho & Co. Advocates filed its written submissions dated 9<sup>th</sup> December, 2024 and on the issue of whether the Petitioner met the conditions for grant of



stay of execution counsel submitted on the three conditions starting with substantial loss. Counsel submitted that the Petitioner did not demonstrate the kind of substantial loss he would suffer if the stay order is not made in his favour.

13. Counsel relied on the case of Samuel Waiya Githukurio v Stephen Mungai Waita & 3 Others (2020) eKLR on what amounts to substantial loss. That the costs were ascertained at Kshs 425,000/= and no reference had been preferred against the ruling. That the Respondent defended the Petition and it should be allowed to recover costs. That the Petitioner has not shown what damages he would suffer if stay is not granted.
14. On the condition of bringing the application without undue delay counsel submitted that the ruling on taxation was delivered on 6<sup>th</sup> September, 2024 and this application was filed on 23<sup>rd</sup> September, 2024 and admitted that the delay was not inordinate but the Petitioner did not file the application immediately and was prompted by their letter requesting for the payment of the said costs.
15. On the condition for security for costs counsel submitted that the Petitioner did not offer any security and relied on the case of Jacqueline Kiaraho v Co-operative Bank of Kenya Limited (2009) eKLR on need for such security to be offered. That the Petitioner did not did not show that the Respondent who is a financial institution cannot refund the said amount in the event of successful appeal.

### **Determination**

16. On the issue of stay orders the grounds upon which this court exercises the discretion to grant a stay of execution are well governed by the Civil Procedure Rules under Order 42 Rule 6 which stipulates as follows: -
  - (2) No order for stay of execution shall be made under subrule (1) unless—
    - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
17. In Joseph Odide Walome v David Mbadi Akello [2022] eKLR the court in support of the above provision held as follows;

An applicant needs to satisfy the court on the following conditions before they can be granted the stay orders:

  - a. Substantial loss may result to the applicant unless the order is made,
  - b. The application has been made without unreasonable delay, and
  - c. Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
18. On the issue of substantial loss, this was ably explained by Gikonyo J in the case of James Wangalwa & Anor v Agnes Naliaka Cheseto [2012] eKLR where the learned Judge observed:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the



CPR. This is so because execution is a lawful process...The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail.

19. The Petitioner is seeking stay of execution of the costs taxed by Hon. Fredrick Nyamora on 6<sup>th</sup> September,2024 of Kshs 425,000/=. The Petitioner alleges that since he has opted to appeal by attaching the Memorandum of Appeal if the stay of execution is not allowed it will render the appeal nugatory. The Petitioner does not seem to challenge the taxation ruling by preferring a reference but his issue is based on the intended appeal.
20. As observed in the cases cited above, the Petitioner has not illustrated how he will suffer substantial loss if this application is not granted apart from relying on the intended appeal being rendered nugatory. That notwithstanding this application was filed together with the Memorandum of Appeal which means it would be prejudicial to the Petitioner if he succeeds on the appeal yet the Respondent has already executed the order on costs.
21. This court notes that the Petitioner in the grounds of appeal does not specifically challenge the issue of the court awarding costs to the Respondent. In the interest of justice having looked at the grounds in the memorandum of appeal this court gives the Petitioner a chance to have his appeal first heard and determined. This will avoid rendering the appeal nugatory.
22. On the second limb of approaching the court without unreasonable delay, this court notes that ruling was delivered on 6<sup>th</sup> September,2024 and this application filed on 23<sup>rd</sup> September,2024 which is within the same month. This court finds this period to be reasonable in all circumstances.
23. On the issue of security for costs the Petitioner did not provide any security in his application but on his written submissions he stated that he was willing to abide to the court's directions on the same. This court therefore is of the view that since it is one of the requirements for stay under Order 42 rule 6, the Petitioner should abide by the same.
24. The application for stay of execution is therefore granted on condition that the applicant deposits the taxed sum of Kshs 425,000/= to the court within 45 days of this order in default execution to proceed.
25. Costs of this application shall abide the outcome of the appeal.
26. It is so ordered.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2025**

**DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF MAY, 2025**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

