



**Ken Knit (K) Limited v Wetosi (Appeal E035 of 2024)  
[2025] KEELRC 1407 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1407 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
APPEAL E035 OF 2024  
MA ONYANGO, J  
MAY 7, 2025**

**BETWEEN**

**KEN KNIT (K) LIMITED ..... APPLICANT**

**AND**

**TITUS MUKITANGA WETOSI ..... RESPONDENT**

**RULING**

1. The application dated 4<sup>th</sup> November 2024 has been brought by the Applicant/Appellant. It seeks orders that this court be pleased to grant a stay of execution of the judgment and decree in Eldoret CMCC ELRC Cause No. E 139 of 2022 pending the hearing and determination of the appeal.
2. An affidavit sworn by the Applicant's Human Resource Manager sworn on 4<sup>th</sup> November 2024 is annexed to the notice of motion in support of the grounds.
3. The background of the application is that the judgment was delivered in the matter on 4<sup>th</sup> October 2024 in favour of the Respondent herein, which judgment the Applicant is aggrieved with and now wishes to appeal against both the said judgment and the decree to this court. It is averred that execution is imminent as the Respondent's counsel is in the process of obtaining a decree and certificate of costs hence execution can ensue any time unless an order of stay of execution is granted in the first instance. It is further averred that if stay of execution is not granted and the trial court's decree is executed, the intended appeal will be rendered nugatory and the Applicant shall suffer substantial loss. The Applicant has contended that the application has been brought in good faith and has been lodged expeditiously.
4. The application is opposed. The Respondent filed his Replying affidavit sworn on 18<sup>th</sup> November 2024. It is deposed that the application is fatally defective, does not raise any triable issues, incompetent, frivolous, vexatious, scandalous and an abuse of court process and hence should be dismissed in limine.



5. It is further deposed that the application does not meet the required threshold for granting stay of execution and that the Applicant has not demonstrated irreparable harm that it will suffer since costs have not been assessed and decree extracted. The Respondent further deposes that he is capable of repaying should the appeal be successful.
6. The application was canvassed by way of written submissions. I have perused the record and found submissions for both parties. The Applicant's submissions are dated 20<sup>th</sup> January 2025 while the Respondent's submissions are dated 24<sup>th</sup> January 2025. These submissions have been considered in the writing of this ruling.
7. Order 42 rule 6 of the *Civil Procedure Rules* states as follows:
  - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) No order for stay of execution shall be made under sub rule (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."
8. On a preliminary basis this court has to examine whether there is an appeal on the record. For the purposes of an application for stay, a filed Notice of Appeal is sufficient. I have noted that there is a filed notice of appeal as well as Memorandum of Appeal in place in this matter and hence the application is competent on this ground.
9. The second issue that this court will address is whether the instant application has been brought timeously. The judgment having been delivered on 4<sup>th</sup> October 2024 the application was lodged on 4<sup>th</sup> November 2024. Without any further examination I find that the application was filed without undue delay.
10. The third issue is whether the court is satisfied on the basis of the material on the record that substantial loss would result from the execution of the judgment if the orders sought do not issue. In respect of this ground the applicant has averred that the decretal sum is Kshs. 466,618 without tabulation of costs, which amount, the Applicant argues that the Respondent has not demonstrated that he will be able to pay back in the event the Applicant's Appeal is successful. In this regard, the Applicant submitted that the Respondent is a man of straw and has not proved that he is a person of means and that he would be able to repay back the decretal amount in the event the appeal succeeds.
11. In the circumstances, I am persuaded that the Appellant/Applicant has indeed shown that it will suffer substantial loss if the order for stay of execution is not granted.
12. As to security, the applicant has stated that it is willing to abide by such terms as the court may order in the interest of both parties and justice.



13. In view of Order 42 Rule 6 of the *Civil Procedure Rules*, the Applicant's application for a stay of execution pending appeal is granted on the condition that:
- a. The judgment sum of Kshs. 466,618 be deposited in a joint interest-earning account in the names of the Advocates for the parties within 30 days of today.
  - b. The Applicant/Appellant is to file and serve its Record of Appeal within 30 days.
  - c. The Appeal be fixed for mention immediately upon filing of the Record of Appeal.
  - d. The costs of this application shall abide by the outcome of the intended appeal.
14. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 7<sup>TH</sup> DAY OF MAY 2025**

**MAUREEN ONYANGO**

**JUDGE**

