



Kipkoech v Huawei Technologies (Kenya & 2 others (Cause E553 of 2021) [2025] KEELRC 1959 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1959 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E553 OF 2021
BOM MANANI, J
JUNE 30, 2025**

BETWEEN

PETER KIPKOECH CLAIMANT

AND

HUAWEI TECHNOLOGIES (KENYA 1ST RESPONDENT

FAITH CHEPKIRUI NANCY 2ND RESPONDENT

BRIAN SAKWA 3RD RESPONDENT

RULING

1. Through the application dated 2nd February 2024, the Respondents moved this court to strike out and expunge from the court record certain documents which the Claimant had included in his list and bundle of documents on the grounds that the said documents were fabricated and had been illegally obtained by the Claimant. The court declined the request through its ruling that was delivered 16th December 2024.
2. Dissatisfied with the decision, the Respondents filed a Notice of Appeal dated 17th December 2024 intimating their intention to appeal against it. The Respondents have now filed the instant application dated 5th February 2025 in which they seek an order for stay of proceedings pending the hearing and disposal of the intended appeal.
3. The Respondents contend that their appeal raises triable issues and has high chances of success. As such, they contend that if the court does not stay these proceedings, the said appeal will be rendered nugatory.
4. The Respondents contend that the trial Judge erred in dismissing their application in the face of the legal obligation on him to exclude evidence which the Claimant had illegally acquired to support his



- claim. It is their case that admission of such evidence will be detrimental to the administration of justice and will render the trial unfair.
5. The Respondents aver that previous decisions by superior courts have underscored the duty to exclude illegally acquired evidence from proceedings. They contend that this court was bound by those decisions.
 6. The Claimant has opposed the application. He contends that the application is unmerited, incompetent and defective.
 7. The Claimant posits that the Employment and Labour Relations Court Rules, 2024 have no provisions which authorize this court to stay proceedings before it pending determination of an appeal to the Court of Appeal. As such, it is his case that the court has no mandate to issue the orders sought.
 8. The Claimant further contends that Order 42 rule 6 of the Civil Procedure Rules under which the application has been filed does not deal with stay of proceedings pending appeal. He contends that the provision only deals with stay of execution of a decree or order pending appeal. As such, he contends that the application is incurably defective.
 9. The Claimant further contends that the Respondents have no valid appeal before the Court of Appeal. He contends that the mere filing of a Notice of Appeal does not signify filing of an appeal.
 10. He avers that only a valid appeal will entitle the Respondents to move the court for stay of proceedings pending resolution of the said appeal. As such, he contends that in the absence of a valid appeal to the Court of Appeal, this court has no jurisdiction to entertain the instant application.
 11. The Claimant avers that an order to stay proceedings in a cause is not to be taken lightly. It is his case that such order has grave consequences to a litigant's rights to be heard without delay and access to justice. As such, he contends that such order should only be granted in exceptional circumstances.
 12. The Claimant avers that the Respondents have not demonstrated that granting an order for stay of proceedings will serve the interests of justice. He contends that such order will only delay hearing of the case between them.
 13. The Claimant also avers that the Respondents have not demonstrated that failure to stay the instant proceedings will render their proposed appeal nugatory. He contends that even if the Respondents' appeal succeeds after the trial has been concluded, they have the liberty of moving to the Court of Appeal on the matter.
 14. The Claimant urges the court to dismiss the application with costs to him. However, he posits that should the court deem it fit to grant the stay orders, it should order the Respondents to deposit in court the sum of Ksh. 13,260,000.00 as security pending disposal of the intended appeal.

Analysis

15. The Claimant contends that the court has no mandate to issue an order for stay of proceedings in the suit because: there is no pending appeal before the Court of Appeal; and the Employment and Labour Relations Court Rules, 2024 do not entitle it to issue such orders.
16. Regarding whether there is a valid appeal to the Court of Appeal, both parties agree that the Respondents have lodged a Notice of Appeal against this court's ruling. It is this instrument (the Notice of Appeal) that entitles the Respondents to present a substantive appeal to the Court of Appeal (see rule 77(1) of the Court of Appeal Rules, 2022).



17. Under rule 84 of the Court of Appeal Rules, an appeal to the Court of Appeal is instituted by lodging a memorandum and record of appeal at the Court of Appeal registry within sixty (60) days of lodging of the Notice of Appeal. In addition, the party lodging the aforesaid documents must pay the prescribed court fees and deposit security for costs.
18. What I understand from the foregoing is that lodging of a Notice of Appeal does not of itself constitute filing of an appeal to the Court of Appeal. An appeal to that court can only be considered as filed once the memorandum and record of appeal are lodged and paid for.
19. In view of the foresaid, can it be said that the Respondents have filed an appeal to the Court of Appeal? Rule 2 of the aforesaid Court of Appeal Rules describes the term "appeal", in relation to appeals to the Court of Appeal to include an intended appeal. This implies that although an appeal to the court is deemed as filed only when the memorandum and record of appeal are lodged and paid for, there are situations when an intended appeal will be considered as an appeal.
20. It has been observed that inclusion of the term "intended appeal" in the definition of the term "appeal" under the aforesaid rules was meant to confer jurisdiction on the Court of Appeal to entertain applications for stay of execution pending appeal under rule 5(2) (b) of the Court of Appeal Rules even before a substantive appeal is filed.
21. The justification for the above position, it appears to me, was the realization that a party who has lodged a Notice of Appeal may require a stay order even before he files the substantive appeal. As such and in order to ensure that the interests of justice are upheld, an opening was granted by the rules to enable such party to approach the Court of Appeal for the orders.
22. It is in this context that I view the instant request by the Respondents. Although they have yet to lodge a substantive appeal against this court's ruling, they have nevertheless lodged a Notice of Appeal signifying their intention to challenge the decision on appeal. As such and for purposes of ensuring that the interests of justice are upheld, I consider their application for stay of proceedings as legitimate.
23. Importantly, Order 42 rule 4 of the Civil Procedure Rules appears to validate the Respondents' action by affirming that for purposes of a request for stay under the said Order, an appeal is deemed as filed when a Notice of Appeal is lodged. The rule provides as follows:-

“ For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.”
24. The Claimant also argues that because there is no provision in the Employment and Labour Relations Court Rules, 2024 which empowers the court to grant stay of proceedings pending appeal, this court cannot issue such orders. To answer this contention, the court refers to the recent Court of Appeal case of TNT Express Worldwide (Kenya) Limited v Timothy Graeme Steel (Civil Appeal E365 of 2018) [2022] KECA 881 (KLR) (10 June 2022) (Judgment) where the Judges of the court stated that if there is a lacuna in the Employment and Labour Relations Court Rules on any matter, the Employment and Labour Relations Court and the parties before it can resort to the provisions of the [*Civil Procedure Act*](#) and Rules to fill the gap. As such, although the Employment and Labour Relations Court Rules, 2024 are silent on the matter of stay of proceedings pending appeal, the Respondents were entitled to invoke the provisions of the Civil Procedure Rules on stay of proceedings to fill the gap. That being the case, I find that this court has jurisdiction to entertain the instant request.
25. The Claimant has also contended that Order 42 rule 6 of the Civil Procedure Rules only deals with stay of execution of decrees and orders and not stay of proceedings. However, this does not appear to



find favour with a purposeful reading of the said provision. The provision appears to cover both stay of execution of decrees and orders and stay of proceedings by, inter alia, providing as follows:-

“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...” (Emphasis added through underlining).

26. What does not apply to stay of proceedings applications under Order 42 rule 6 of the Civil Procedure Rules are the conditions that are prescribed under Order 42 rule 6(2) of the said rule. The conditions have relevance to applications for stay of execution of decrees and orders.
27. The general position is that orders for stay of proceedings should not be granted as a matter of course. This is because such orders obstruct the right of a party to ventilate his case before a court of law. As such, the court should only entertain requests to stay proceedings before it in exceptional circumstances (see *Avtar Singh Bahra & another v Chief Lands Registrar & 3 others* (Environment & Land Case 799 of 2014) [2022] KEELC 2672 (KLR) (27 June 2022) (Ruling)).
28. The conditions which the court should consider whilst determining an application for stay of proceedings were discussed in the case of *Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000*,. The trial Judge expressed himself on the matter as follows:-

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justicethe sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

29. From the foregoing, it is clear that whilst a court of law should sparingly issue orders staying proceedings before it because of the grave consequences of such orders on the conduct of a trial, it nevertheless has the power to issue these orders if it is in the interests of justice to do so. In considering whether to grant the order, the court should consider various factors including: the need to ensure expeditious disposal of cases; whether the intended appeal raises an arguable matter; the scarcity and optimum use of the limited judicial time; and whether the request for stay of proceedings has been filed without undue delay.
30. In the instant case, the Respondents contend that they have an arguable appeal with a high probability of success. As such, they contend that they are deserving of the orders for stay of proceedings. They have annexed a draft Memorandum of Appeal to evince their assertion.
31. Whilst addressing whether an applicant has a meritorious appeal, a trial court is not expected to determine the merits of the proposed appeal. Rather, it should only consider whether the intended appeal raises a matter which is deserving consideration by the appellate court.
32. From the draft Memorandum of Appeal annexed to the application, it is apparent that what the Respondents want the Court of Appeal to determine is whether article 50 of *the Constitution* constitutes a complete bar to admission of what they believe to be irregularly obtained evidence in the cause. In the court’s view, this is a matter that is deserving consideration by the appellate court if only



to settle the law on the issue. As such and in this context, I am satisfied that the appeal raises an arguable ground of appeal.

33. The court is of the considered view that should the Respondents' appeal succeed after this matter has proceeded to full trial, substantial judicial time will have gone to waste since the proceedings will have been in vain. As such, the court is of the view that the limited judicial time will be best utilized by temporarily holding the trial in abeyance to enable the appellate court determine the preliminary matter first. In a sense, this will also enable expeditious resolution of the matter by avoiding the possibility of reopening the proceedings to accommodate the verdict of the Court of Appeal in the event that the appeal succeeds after the trial has been processed to conclusion.
34. As regard the timeous filing of the application, the court notes that whilst the impugned ruling was delivered on 16th December 2024, the instant application was filed on 5th February 2025, hardly two months down the line. As such and taking into account the fact that time stopped running during the Christmas vacation, the court finds that the application was filed without undue delay.

Determination

35. Having regard to the foregoing, the court finds that the application dated 5th February 2025 is merited.
36. As such, the application is allowed in the following terms:-
- a. The court grants the order to stay proceedings in the cause pending the hearing and determination of the Respondents' intended appeal against the court's orders of 16th December 2024.
 - b. Costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JUNE, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

