



African Global Expertise Limited (Sued as Agex Group Gasoko (African Global Expertise)) v Karera (Employment and Labour Relations Appeal E114 of 2024) [2025] KEELRC 1853 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1853 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E114 OF 2024**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

AFRICAN GLOBAL EXPERTISE LIMITED (SUED AS AGEX GROUP GASOKO (AFRICAN GLOBAL EXPERTISE)) APPELLANT

AND

NICHOLAS KARERA RESPONDENT

RULING

1. This matter arose out of an application dated 2nd April, 2025 by the Appellant. It seeks several orders, including the certification of the application as urgent, temporary stay of execution of the decree, reinstatement of an earlier application dated 30th April, 2024, and costs.
2. The application is premised on the grounds that the Appellant's non-attendance during the hearing of the earlier application on 20th November, 2024 was inadvertent and that substantial loss would be suffered if the prayers sought are not granted. The Respondent opposed the application through a replying affidavit sworn on 30th May, 2025 terming it frivolous, vexatious, and an abuse of the court process.
3. The genesis of this dispute lies in ELRC Case No. 889 of 2019 where the Respondent sued the Appellant for unlawful termination of employment. The trial court delivered judgment on 14th March, 2024 awarding the Respondent terminal dues amounting to Kshs.675,000/- plus interest. Dissatisfied with this decision, the Appellant filed an appeal and sought a stay of execution through an application dated 30th April, 2024. However, this application was dismissed on 20th November, 2024 due to the Appellant's non-attendance.
4. The Appellant now seeks to reinstate the dismissed application arguing that their absence was inadvertent and not deliberate. They contend that they were unaware the court sat on 20th November,



2024, having expected the matter to proceed on 19th November, 2024. The Respondent on the other hand asserts that the Appellant's actions are a ploy to delay execution and frustrate the enjoyment of the fruits of his judgment.

5. The following issues cry for determination;
 - i. Whether the Appellant has demonstrated sufficient cause for the reinstatement of the dismissed application.
 - ii. Whether the Appellant has met the threshold for grant of stay of execution pending appeal.
 - iii. Whether the application is frivolous, vexatious, or an abuse of the court process.
6. The 1st issue for determination is whether the Appellant has demonstrated sufficient cause for the reinstatement of the dismissed application. The Appellant seeks reinstatement of the application dated 30th April, 2024, which was dismissed for non-attendance. Order 12 Rule 7 of the Civil Procedure Rules provides that a court may set aside an order of dismissal for sufficient cause. The key consideration is whether the absence was excusable and whether the applicant has acted diligently.
7. The Appellant attributes their non-attendance to a diary error stating they were unaware the court sat on 20th November, 2024. While inadvertence can sometimes justify reinstatement courts are cautious to prevent abuse of process. In *Shah v Mbogo* [1967] EA 116, the court emphasized that discretion to reinstate must be exercised judiciously to prevent injustice.
8. Here, the Appellant's explanation, though plausible is undermined by the delay in filing the present application—five months after dismissal. Litigation must be conducted with diligence and unexplained delays erode the credibility of claims of inadvertence. The Respondent rightly argues that the Appellant's conduct suggests a tactic to delay execution rather than a genuine mistake.
9. The principles governing stay of execution are well settled. In *Halai & Another v Thornton & Turpin* [1963] Ltd [1990] KLR 365 where the court observed that an applicant must demonstrate, substantial loss if stay is denied. Again, the application must be made without undue delay and offer security for due performance of the decree.
10. The Appellant argues that the Respondent may be unable to refund the decretal sum if the appeal succeeds. However, no evidence has been adduced to prove the Respondent's financial incapacity. It is trite law a mere assertion is insufficient and evidence of such incapacity must be demonstrated.
11. Additionally, the Appellant's delay in seeking reinstatement weakens their claim of urgency and diligence. The Respondent has already commenced execution and any further delay would prejudice his right to enjoy the fruits of judgment. Courts must balance the interests of the parties by ensuring that successful litigants are not unjustly deprived of their awards as was established in the authority of *RWW v EKW* [2019] eKLR.
12. The Respondent contends that the application is frivolous and an abuse of process of court. An abuse of process occurs when court procedures are misused to harass, delay, or obstruct justice. This is thesis in the authority of *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others* [2018] eKLR.
13. The Appellant's conduct of failing to attend court, delaying reinstatement and repeatedly seeking stay orders suggests a pattern of delay tactics. While litigants have a right to appeal, this right must not be exercised to undermine finality in litigation. The Respondent's frustration is understandable, as he has been kept from his rightful award for over a year since the judgment of court.



14. The Appellant has not demonstrated sufficient cause for reinstatement of the dismissed application. The delay in seeking reinstatement, coupled with the lack of evidence on substantial loss tilts the scales against granting the orders sought. Litigation must end at some point and the Respondent is deserving of enjoyment of the fruits of judgment.
15. In these premises, I feel inclined to dismiss the application with costs to the Respondent which I hereby do. The Respondent be and is hereby at liberty to proceed with execution of the decree.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

APPEARANCES:

MS ADE INSTRUCTED BY KIPKORIR CHERUIYOT, CHIVAI & KIGEN ADVOCATES FOR THE APPELLANT/APPLICANT.

MISS MURIITHI HOLDING BRIEF FOR MISS MUTINDA INSTRUCTED BY KITHOME MUTINA & COMPANY ADVOCATES FOR THE RESPONDENT.

