



**University of Nairobi v Kibunja (Employment and Labour Relations Appeal  
E008 of 2025) [2025] KEELRC 1854 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1854 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E008 OF 2025**

**DKN MARETE, J**

**JUNE 25, 2025**

**BETWEEN**

**UNIVERSITY OF NAIROBI ..... APPELLANT**

**AND**

**MARGARET NDUKU KIBUNJA ..... RESPONDENT**

**RULING**

1. This matter arose out of an application dated 17th January 2025 filed by the Appellant/Applicant. It seeks stay of execution of the judgment and decree by the lower court delivered on 17th December 2024 in MCELRC No. E419 of 2022 pending the hearing and determination of the appeal. The Respondent opposes the application.
2. The judgment in question awarded the Respondent Kshs.2,761,804.60 as unpaid gratuity, costs, and interest. The Appellant contends that the trial court erred in applying the 2013–2017 Collective Bargaining Agreement (CBA) retrospectively to cover the Respondent’s employment period from 1st June 1986 to 23rd August 2016.
3. The Respondent was employed by the Appellant on 1st June 1986 and retired on 23rd August 2016. She filed suit claiming unpaid gratuity under the 2013–2017 CBA which provides for gratuity at 31% of annual basic pay. The trial court upheld her claim, ruling that the CBA applied retrospectively.
4. The Appellant argues that the CBA’s effective date is 1st July 2013 and cannot apply to pre-2013 service. The trial court ignored binding precedents like ELRC Cause E722 of 2022, University of Nairobi v. KUDHEIHA. Execution would cause substantial loss comprising of public funds which would be irrecoverable if appeal succeeds.
5. The Respondent counters this by arguing the Appellant failed to prove substantial loss or provide security for the decretal sum. She is entitled to enjoy the fruits of her judgment after prolonged



litigation and that the Appellant's delay tactics prejudice her rights under Article 41 on fair labour practices.

6. The issues for determination are;
  - (i) Whether the Applicant has met the threshold for stay of execution under Order 42 Rule 6 of the Civil Procedure Rules.
  - (ii) Whether the appeal is arguable with high chances of success.
  - (iii) Whether the balance of convenience favors granting stay.
7. As on (i) above the legal framework for Stay of Execution is under Order 42 Rule 6 (2) which mandates that an applicant must prove; substantial loss if stay is denied, unreasonable delay in filing the application, security for the decretal sum and substantial Loss. The Appellant asserts that paying out the decretal sum out of public funds would be unsuitable as these are irrecoverable if the appeal succeeds. On this, she seeks to rely on authority of Cooperative Bank v. Taramusi Francis Ongoki [2019] eKLR. The Respondent submits that the Appellant's claim of her "unknown means" is speculative and anchors on the authority of Civil Appeal E268 of 2023, Muthui v. Kasivu [2024], KEHC 9627 KLR.
8. The Appellant a public institution, has demonstrated that recovering the decretal sum or other funds post-appeal would be impractical in tune with the authority of Ethics & Anti-Corruption v. Peter Mangiti 2016, eKLR. On the issue of unreasonable delay, the application was filed within 30 days of the judgment.
9. The stay period lapsed on 17th January 2025. No delay is evident whatsoever. On security for costs, the Appellant argues it is exempt from depositing security as a public entity in tandem with the authority of Teachers Service Commission v. Benson Kuriam Mwangi [2020], eKLR.
10. The Respondent demands partial payment of two thirds (2/3) of the decretal amount to her and a deposit of one third (1/3) in a joint account per the authority of University of Nairobi v. Mary M. Cornelius, [2021]eKLR. Whereas the public funds warrant utmost protection, fairness to the Respondent necessitates a balanced approach. On the arguability of the Appeal the Appellant's grounds of appeal include: retrospective application of the CBA contrary to precedents, ignored counterclaim and submissions. The Court's finds the appeal raises substantial legal questions like CBA interpretation and has high prospects of success.
11. On a balance of convenience and public interest vis-a-vis individual rights, the Appellant's prudent use of public funds, Article 232(1)(b) must be weighed against the Respondent's right to gratuity provided by Article 41. The court finds a conditional stay balances both interests, the Applicant having satisfied the threshold for stay of execution.
12. I am therefore inclined to allow the application and order as follows;
  - i. The Respondent shall deposits fifty percent 50% of the decretal sum (Kshs.1,380,902.30 to court in thirty (30) days.
  - ii. Each party shall bear their costs of this application.
  - iii. Mention on 01.10.2025 before the Deputy Registrar for confirmation of compliance on filing of a Record of Appeal et al.

**DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**D. K. NJAGI MARETE**



## **JUDGE**

Appearances:

1. Mr. Omondi instructed by CS.Fredrick Collins Omondi for the Appellant/Applicant.
2. Mr. Achila holding brief for Mr. Onenga for the Respondent.

