



REPUBLIC OF KENYA



KENYA LAW
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**Banking, Insurance & Finance Union (Kenya) v Harambee Sacco Society Limited
(Cause E122 of 2024) [2025] KEELRC 1807 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1807 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E122 OF 2024
CN BAARI, J
JUNE 19, 2025**

BETWEEN
BANKING, INSURANCE & FINANCE UNION (KENYA) CLAIMANT
AND
HARAMBEE SACCO SOCIETY LIMITED RESPONDENT

RULING

1. Before Court is the Respondent/Applicant's Motion dated 12th February, 2025, brought pursuant to Sections 1A,1B and 3A of the *Civil Procedure Act*, Section 7 of the *Appellate Jurisdiction Act*, Order 42 Rule 6, Order 51 Rule1 and 3 of the Civil Procedure Rules. The Applicant seeks orders THAT: -
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. The this Honourable Court grants stay of execution of the judgment and/or decree herein, pending hearing and determination of the appeal.
 - v. The Costs of this application be provided for.
2. The application is supported by grounds on the face of the motion, the supporting affidavit and the further affidavit of Paul Kiplangat Tanui sworn on 12th February, 2025 and 27th February, 2025 respectively. The crux of the Motion is that on 31st January, 2025, Hon. Justice James Rika delivered Judgment in this suit and awarded general wage increment of 4% for each of the 4 years beginning 1st January, 2023 to the members of the Claimant/Respondent.
3. The Applicant states that being dissatisfied with the decision of this Honourable Court, it intends to appeal against the same, therefore necessitating the instant application.



4. It states further that there is no order of stay of execution against the said Judgment and the Claimant/ Respondent may begin execution of the Judgment to the detriment of the Respondent/Applicant.
5. The Applicant avers that the intended appeal has a high chance of success and if execution is carried out, the same will be rendered nugatory.
6. The Claimant/Respondent opposed the motion vide a Replying affidavit sworn by Isaiah Munoru Mucheke on 18th February, 2025. It argues that the Applicant has not adduced any evidence of substantial loss in the event the orders sought are not granted.
7. The Claimant/Respondent further states that the Applicant has not calculated the arrears emanating from the judgment, and has not offered any security as is required by law for grant of stay of execution.
8. It states further that its members are employees working for the Applicant for wages and therefore in a position to refund/repay any monies paid to them if need arise.
9. The Claimant/Respondent finally prays that the Respondent/Applicant be ordered to tabulate all the decretal sum/arrears as from January, 2023 to date for each employee, and the same be deposited in a joint interested earning account within thirty (30) days of the order of this court, and thereafter every month, and in default execution to issue.
10. Parties urged the application orally on 13th May, 2025, reiterating their pleadings.

Determination

11. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules, provides for stay of execution 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.”

12. The grant of an order of stay is an equitable remedy and which is given at the discretion of the Court. The general rule however, is that if there is no overwhelming hindrance, a stay of execution ought to be



granted so that an appeal, if successful, may not be rendered nugatory. Cotton L J in *Wilson v Church* (No 2) 12 Ch D (1879) 454 held: -

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

13. In the case of *Stephen Wanjohi v Central Glass Industries Ltd Nbi HCCC No. 6726 of 1991* the Court spelt out guiding principles in the exercise of discretion in staying execution of a Judgment as follows: -

“For the Court to grant stay of execution there must be:

- (a). Sufficient cause.
- (b). Substantial loss.
- (c). No unreasonable delay and security offered for due performance of the decree.”

14. The Respondent/Applicant has placed before this Court a tabulation of the cost implication of the Judgment delivered in this matter on 31st January, 2025. The amount per the said tabulation stands at Kshs. 2,514,093 per month and Kshs.35,014,542.60 annually.

15. The amount subject of the judgment is no doubt substantial, and which goes to say that were the judgment to be overturned, the Applicant stands to suffer substantial loss. I however note that the Claimant/Respondent’s members are employees of the Applicant, hence the risk of loss is limited considering that the Applicant will still be in a position to recover the amounts paid should the appeal succeeds and where stay is not granted.

16. On whether the motion herein was filed without unreasonable delay, I note that judgment in the matter was rendered on 31st January, 2025 and the Motion filed on 12th February, 2025, just 11 days after the said judgment. It is thus clear that the application was filed without undue delay.

17. It is also evident from the court record that the notice of appeal was filed on 5th February, 2025, just four (4) days after the delivery of the judgment now impugned.

18. Considering that the Respondent/Applicant has established that it stands to suffer substantial loss, and further having filed the notice of appeal and the instant motion without undue delay, I find the motion merited.

19. Noting however that the Respondent/Applicant has not offered security for performance of the decree herein, I hereby allow the application on the following conditions:

- a. That an order for stay of execution of the judgment delivered in this matter on 31st January, 2025, be and is hereby granted pending hearing and determination of the appeal, conditional on the Applicant depositing Kshs.17,000,000/- in court within 45 days of this order.
- b. That in default, the Claimant/Respondent shall be at liberty to execute.
- c. I make no orders on costs.

20. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19TH DAY OF JUNE, 2025.

C. N. BAARI



JUDGE

Appearance

N/A for the Claimant/Respondent

Mr. Kimakia present for the Respondent/Applicant

Ms. Esther S – C/A

