



**Yellowline Logistics Limited v Mwangi (Appeal E239 of 2024)
[2025] KEELRC 1800 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1800 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E239 OF 2024
K OCHARO, J
JUNE 12, 2025**

**BETWEEN
YELLOWLINE LOGISTICS LIMITED APPELLANT
AND
ANTHONY MWANGI RESPONDENT**

RULING

1. By the Notice of Motion application dated 13TH November 2024, the Applicant sought;
 - i. That the application be certified as urgent and service be dispensed with in the first instance.
 - ii. That this Court be pleased to grant an order of stay of execution of the judgment and decree of Hon. M. L. Nabibya [SPM] in Mombasa MCELRC No. E 168 of 2023 delivered on 17th October, 2024 and all consequential orders thereof pending the hearing and determination of this application.
 - iii. That this Honourable court be pleased to grant an order of stay of execution of the Judgment and decree of Hon. M.L. Nabibya [SPM] in Mombasa MCELRC No. E168 of 2023 of 17th October, 2024 pending the hearing and determination of the Appeal.
 - iv. That the costs of this application be provided for.
2. The application is premised on the grounds set out on the face of the application, and the affidavit in support thereof, sworn by Mohsin Said on 13th March 2024.
3. The Respondent opposed the application via her replying affidavit sworn on 23rd April 2025.



The Application.

4. The Appellant stated that on 17 October 2024, the trial Court delivered Judgment against it in the above-mentioned suit, condemning it to pay KShs 4,823,015 on account of unpaid overtime.
5. Aggrieved by the Judgment, it filed the appeal herein. The Respondent will likely execute the decree flowing from the Judgment, and if the stay order sought cannot be granted, it will suffer irreparable loss. The appeal shall be rendered nugatory.
6. It is ready to give a bank guarantee or any other security that this Court may deem fit to order to be granted as security for the due performance of the decree if the appeal fails.
7. It was further stated that the application was filed timeously without delay.

The Respondent's Response.

8. The Respondent asserted that the application herein is a tactic the Appellant employs to delay him from realising the fruits of his judgment.
9. The Judgment by the trial Court was well-reasoned and with merit.
10. The Applicant's application does not meet the pre-requisites of Order 42 Rule 6 of the Civil Procedure Rules. He was declared redundant as the Appellant/Applicant was suffering from financial constraints. As such, the security offered, the bank guarantee, is insufficient, and he cannot be assured that he will be able to realise the fruits of his judgment should the appeal fail.
11. He suggested that if the application is allowed, it should be subject to the Applicant depositing the entire decretal amount in a joint interest-earning account.

Analysis and Determination.

12. I have carefully considered the Notice of Motion, the grounds upon which it is premised and the affidavit in support thereof, and the Respondent's replying affidavit, and return that the sole issue for determination is as follows: -
 - a. Whether this Court should grant the Applicant a stay of execution of the Judgment and Decree of the trial Court, pending the appeal herein.
7. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules 2010 provides for a stay of execution pending appeal, thus;

“Stay in case of appeal [Order 42, rule 6.]

- (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 an application being made, to consider such application and to make such order thereon as may to it seems 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 subrule (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.”

7. The Court’s power to grant a stay pending appeal is fettered and exercised in favour of an applicant only upon satisfying the three conditions outlined in the provision. However, it is essential to note that the provision is structured in a way that requires the Court to judiciously and fairly balance the interests of the Applicant, who has exercised his undeniable legal right of appeal, and the Respondent, who holds a judgment from which they are meant to benefit.

7. In an application like the instant application, the Applicant must sufficiently demonstrate that he or she would suffer substantial loss if the orders were not granted. In the case of *Century Oil Trading Company Ltd vs. Kenya Shell Limited, Nairobi (Milimani) HCMCA No. 1561 of 2007*, the Court viewed substantial loss, thus:

“Where execution of a money decree is sought to be stayed, in considering whether the applicant will suffer a substantial loss, the financial position of the applicant and that of the respondent becomes an issue. The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgment.”

7. The trial court entered judgment for the respondent in the sum of KShs. 4,823,015 for what was termed as unpaid overtime for twelve [12] years. I cautiously state that I have carefully considered the circumstances of the case before the trial magistrate, including the fact that the respondent was a driver earning a monthly salary of KShs. 29,583, and the head under which the colossal sum was awarded. Furthermore, the casualness with which the respondent has responded to the appellant’s assertion that it will suffer a substantial loss if the order for the stay of execution is not granted. And take the view that the justice of this application demands a conditional stay in the terms as shall come out shortly hereafter.

8. I am satisfied that the instant application was filed without undue delay, and the appellant has offered security for the due performance of the decree, should it eventually be called upon to do so.

13. By reason of the foregoing premises, the appellant’s application for a stay of execution of the decree in *Mombasa CMEJRC No. E. 334 of 2022*, pending the hearing and determination of the appeal herein, is allowed subject to the appellant depositing the sum of KShs 600,000 as security in court. In the event of default, execution for the entire decretal amount shall proceed.

14. Orders accordingly.

READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 12TH JUNE, 2025.

OCHARO KEBIRA



JUDGE

