



**Maina v Shalimar Flowers (K) Limited (Cause E075 of 2024)
[2025] KEELRC 1686 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1686 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E075 OF 2024
AN MWAURE, J
JUNE 11, 2025**

BETWEEN

JAMES MACHARIA MAINA APPELLANT

AND

SHALIMAR FLOWERS (K) LIMITED RESPONDENT

RULING

Introduction

1. The Appellant filed a Notice of Motion dated 13th November 2024 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. Pending the hearing and determination of this Application, this Honourable court be pleased to grant stay of implementation of the ruling and order delivered on the 31st October, 2024, by the Hon. E. Ngigi (S.P.M) in Rumuruti Magistrate's Court Employment & Labour Relations Court case No. E001 of 2024 and more particularly, an order staying dismissal of the Appellant's case in default to pay thrown away costs of Kshs.30,000/= within 14 days.
 3. Pending the hearing and determination of the Appeal, this Honourable court be pleased to grant stay of implementation of the ruling and order delivered on 31st October,2024, by Hon. E. Ngigi (S.P.M) in Rumuruti Magistrate's Court Employment & Labour Relations Court Case No. E001 of 2024 and more particularly, an order staying dismissal of the Appellant's case in default to pay thrown away costs of Kshs.30,000/= within 14 days.
 4. Costs of this Application abide the outcome of the Appeal.



2. The application is expressed to be brought under section 12(3)(i) of the *Employment and Labour Relations Court Act* and Rule 17 of the Employment and Labour Relations Court (Procedure) Rules and all other enabling provisions of the law.

Appellant's case

3. The application is supported by the affidavit of the Appellant dated the same date as the application.
4. The Appellant avers that his suit was scheduled for hearing on 29th August 2024, but due to a delay in another case the advocate who was handling it missed the rescheduled time of 11:45 am.
5. Despite being present at the court lobby, the Appellant avers that he was unaware of the change, and the court dismissed the case with costs.
6. The Appellant avers that he filed an application to reinstate the suit, but the court ruled on 31st October 2024 that he must pay Kshs.30,000/= as throwaway costs within 14 days for reinstatement.
7. The Appellant avers that due to financial hardship, he could not raise the amount, leading to the suit's dismissal.
8. Aggrieved, the Appellant avers that he filed an appeal, arguing that his application was justified and that the imposed costs were unfair.
9. The Appellant avers since he was unable to raise the Kshs. 30,000/= due to financial hardship stemming from him being terminated from employment in December 2022, followed by incarceration and mistreatment, which led to mental instability and prevented him from working until mid-2023.
10. Subsequent, the Appellant avers that what followed were arrests and legal proceedings that resulted in his imprisonment from December 2023 to August 2024, further hindering his ability to earn an income.
11. The Appellant avers that since his release, he has struggled to find stable employment, currently working as a casual labourer.
12. The Appellant avers that his advocate on record is handling the appeal on a pro bono basis, but the lower court suit stands dismissed due to non-payment of the imposed costs.
13. The Appellant avers that the dismissal has denied him the right to be heard and that his appeal raises significant legal and factual issues with a strong chance of success.
14. The Appellant urged this Honourable Court to allow the application as prayed.

Respondent's replying affidavit

15. The Respondent opposed the application vide a replying affidavit dated 18th January 2025, sworn by David Ndiritu, the Respondent's Human Resource Manager.
16. The Respondent avers that the Appellant must satisfy the condition of stay, which includes resulting in substantial loss, application to be made without unreasonable delay and security for the due performance of the order.
17. The Respondent avers that the Appellant has not demonstrated the substantial loss that may occur.
18. The Respondent avers that the Appellant is using his incarceration as an excuse, and yet he has not offered to furnish security for due performance for purposes of meeting his obligation if he ultimately fails in his appeal.



19. The Respondent avers that in the event that this Honourable Court grants the orders sought, the Appellant be directed to deposit the costs of Kshs.30,000/=.
20. The Respondent avers that the Appellant's misfortunes had made him a victim and fails to appreciate the great inconvenience also caused to the Respondent as he seeks to appeal on the discretion of the trial court.
21. The Respondent avers that the application is misconceived, misinformed, made in bad faith and amounts to abuse of the court process and ought to be dismissed.
22. Parties were directed to dispose of the application by way of written submissions.

Appellant's written submissions

23. The Appellant submitted that the principles for granting injunctions, are well captured in *Giella V Cassman Brown* [1973] E.A., which require an applicant to demonstrate a prima facie case with a probability of success, show that irreparable harm would result without the injunction, and, if in doubt, the court should decide based on the balance of convenience.
24. Order 42 Rule 6(2) of the Civil Procedure Rules stipulates that a stay of execution can only be granted if the court is satisfied that substantial loss may occur to the applicant and that the application was made without unreasonable delay.
25. The Appellant submitted that he has met the principles outlined in *Giella V Cassman Brown*(supra) and Order 42 Rule 6 of the Civil Procedure Rules, as the application was filed promptly, just days after the trial court's ruling on 31st October 2024. The Appellant contended that his appeal is strong, as the throw away costs imposed were excessive and lacked legal justification. The Appellant also submitted that the Respondent did not incur any actual expenses from the dismissal, apart from the already assessed attendance costs of Kshs.8,000/- on 29th August 2024. Therefore, the Appellant seeks relief, emphasising the unfair financial burden imposed.
26. The Appellant relied on the case of *Sheila Wambui Muturi Peter Macharia Muiro* [p [2021] KEHC 7870 (KLR) where the court stated the trial court awarded Kshs.100,000/= as throw-away costs without justification, especially since the judgment being set aside was interlocutory, not final. The magistrate failed to explain how the amount was determined, and the appellant had already been awarded costs for the application. The court finds the additional costs excessive and unfair, as it effectively barred the appellant from proceeding with the case. Given the unjust exercise of discretion, the reviewing court asserts its authority to intervene.
27. The Appellant argued that failing to grant the orders as prayed will result in irreparable loss that cannot be compensated by damages. The Appellant further argued that if this Honourable Court does not stay the orders issued on 31st October 2024 and he cannot pay the imposed costs, his suit will be dismissed without being heard on its merits. This would violate his constitutional rights to fair administrative action, fair hearing, and access to justice under Articles 47, 48, and 50 of *the Constitution*. The Applicant contends that such an outcome would be a miscarriage of justice that the court should prevent.
28. The Appellant relied on the case of *Wachira Karani V Bildad Wachira* [2016] KEHC 6334 (KLR), where the court stated as follows:

“I hold the view that it would be unjust and indeed a miscarriage of justice to deny a party who has expressed the desire to be heard the opportunity of prosecuting his case. The court



in the above-cited case of Richard Nchapai Leiyanguvs IEBC & 2 others proceeded to state as follows: -

“The right to a hearing has always been a well-protected right in our constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent jurisdiction to dismiss suits, this should be done in circumstances that protect the integrity of the court process from abuse that would amount to injustice and at the end of the day, there should be proportionality.”

29. The Appellant submitted that the trial court’s order of 31st October 2024, which imposed excessive throwaway costs and dismissed the case upon non-payment, resulted in severe injustice. The Appellant also submitted that the trial court failed to consider the Appellant’s financial hardship, including their prior incarceration, which was known to the court. As a result, the decision did not uphold fairness between the parties and caused undue hardship.
30. In *Wachira Karani V Bildad Wachira*(supra), the court’s fundamental duty is to ensure justice by allowing all parties a fair opportunity to present their case. The principle of natural justice requires that no person be denied the chance to appear and defend themselves. If this right is violated, any resulting determination can be set aside. Sir Dinshah Mulla, in *The Code of Civil Procedure*, emphasizes that the law is not exhaustive, as legislators cannot foresee all future litigation scenarios. When procedural gaps exist, courts can invoke their inherent powers to ensure fairness and substantial justice. These powers apply specifically to procedural matters, allowing courts to override standard rules when they lead to injustice and no other remedy is available.
31. Still in *Wachira Karani V Bildad Wachira*(supra), the court explained its unlimited power to grant any relief, stating that Courts possess inherent powers to grant relief when justice and equity demand it. The Supreme Court of India in *Raj Bahadur Ras Raja vs Seth Hiralal* emphasized that this power is not conferred but is intrinsic to the court’s duty to ensure justice between parties. Similarly, Lord Cairns in *Roger V Comptoir D’ Escompts De Paris* highlighted that courts must prevent harm to suitors, with judicial responsibility extending from the lowest to the highest court in the judicial hierarchy.
32. The Appellant urged this Honourable Court to allow the application as prayed.

Respondent’s written submissions

33. The Respondent relied on the Court of Appeal case of *Butt V Rent Restriction Tribunal* [1979] KECA 22 (KLR) the court set out the following principles of granting an order of stay. The Respondent argued that granting an order of stay would unjustifiably delay proceedings, as the appeal challenges a discretionary decision of the magistrate’s court. The Respondent contended that such a stay would effectively hold the case at ransom without valid justification.
34. The Appellant submitted that the determination of the security deposit is not solely based on the applicant’s willingness but is a matter for the court to decide. The court must balance the interests of both parties while assessing the appropriate security to be provided. In *Giafranco Manenthi & Another V Africa Merchant Assurance Co. Ltd* [2019] eKLR, the court observed that an applicant seeking a stay of execution from a money decree must fulfil the condition of providing security for due performance of the decree under Order 42 Rule 6(1) of the Civil Procedure Rules. This ensures that the successful party is not deprived of the ability to execute the judgment and benefit from its outcome if the appeal is unsuccessful.
35. In *Nduhiu Gitahi V Warugongo* [1988] KLR 1 KAR; [1988-92] 2 KAR 100 where the Court of Appeal expressed itself stating that the process of providing security is a recurring necessity. As long as



the opposing party is sufficiently protected, security should be arranged in a manner that minimizes inconvenience to the party offering it. Various forms of security exist, including bank guarantees and payments into court, among others. In *M.O.M Amin Transporters Limited and another V Alexander Ndung’u Mbugua and 2 others* [2017] eKLR, the court cited the case of *Kiplagat Kotut V Rose Jebo rKpngok* [2015] eKLR, *Kenya Commercial Bank Limited V Sun City Properties Limited and 5 others* [2012] eKLR and *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* [1986] KECA 94 (KLR), where the common thread was that a stay of execution will not be granted unless the conditions in Order 42 Rule 6 of the Civil Procedure Rules are satisfied.

36. In *Equity Bank Limited V Taiga Adams Company Limited* [2006] eKLR, Mutungi J stated as follows:
- “It is not enough to satisfy 1 or 2 of the requirements under Order 42 Rule 6. All of the requirements must be met for the court to grant orders of stay pending appeal.”
37. In *David Ogega Ngangi and Another V Alfred Matoya Chweya* [2020] eKLR, Justice J.M Onyango dismissed the Applicant’s application, stating that the Applicant failed to demonstrate a willingness to provide security for costs. As a result, the Applicant did not meet the conditions outlined in Order 42 Rule 6 of the Civil Procedure Rules, leading to the rejection of the application with costs awarded to the Respondents.
38. In conclusion, the Respondent urged this Honourable Court not to grant the application as prayed and dismiss it with costs.

Analysis and determination

39. The court has meticulously gone through the application, supporting affidavit, replying affidavit and rival submissions by both counsels; the issue for determination is whether this Honourable Court ought to grant an order of stay as prayed in the application.
40. Order 42 Rule 6(2) of the Civil Procedure Rules provides as follows:
- “No order for stay of execution shall be made under sub-rule (1) unless:
- a. The court is satisfied that a 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 due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
41. In *Butt V Rent Restriction Tribunal* (supra) the Court of Appeal stated as follows:
- “The power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal. The general principle in granting or refusing a stay is; if there is no overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s decision. A judge should not refuse stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the Applicants at the end of the proceedings. The court, in exercise of its discretion whether to grant or refuse an application for stay, will consider the special circumstances of the case and its unique requirements.”



42. In this instant case, on the hearing date, the court file was missing, but the trial court assured the Appellant’s counsel that it would be located for an open court hearing. Despite this, the Appellant’s advocate confirmed readiness to proceed with two witnesses, including an expert witness from Nairobi, and the matter was allocated for 11:00 am. However, the Appellant’s advocate was also handling another case in a different courtroom at 10:00 am, which unexpectedly took longer than anticipated, concluding at 12:15 pm. This delay affected their ability to attend the scheduled hearing on time.
43. The trial court delivered a ruling dismissing the case without hearing the Appellant, violating Articles 47, 48, and 50 of *the Constitution*. Looking on whether the Appellant has fulfilled the condition of stay, the application was filed on time that is on 13th November 2024. The judgment had been delivered on 31st October 2024. The Appellant has demonstrated the substantial loss he has faced, including incarnation and mental illness. The Applicants submission is that the security is within the discretion of this Honourable Court to decide.
44. It is trite law that every party is entitled to a fair hearing as guaranteed in Articles 47 and 48 of our 2010 Constitution. In the case of Wachira Karani -vs- Bildad Wachira 2016 KeHC 6334 KLR the court stated as follows-
- “I hold the view that it would be unjust and indeed a miscarriage of justice to deny a party who has expressed the desire to be heard the opportunity of prosecuting his case. The right to a hearing is indeed an inherent right and must be protected jealously.
45. The Applicant herein had informed the court he was ready to proceed with his case but there was some confusion when his advocate was held up in another court. Then his case was dismissed. He attempted to have it reinstated but was asked to pay throw away costs of Kshs.30,000/=. This case was then dismissed since he could not raise the Kshs.30,000/=. Indeed he says even the legal services he is getting are pro bono.
46. In view of the foregoing, this court allows the application dated 13th November 2024 and so grants stay of
- “Implementation” of the ruling and order delivered on 31st October 2024 by Hon. E. Ngigi (S.P.M) in Rumuruti Magistrate’s Court Employment and Labour Relations Case No.001 of 2021 and more particularly an order staying dismissal of the Appellant’s case in default to pay throw away costs of Kshs.30,000/= within 14 days. The Appellant is discharged from paying the costs of Kshs.30,000/=.
47. The costs of this application will be in the cause.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They



have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

