



**Moi Teaching and Referral Hospital v Njuguna (Appeal  
E023 of 2024) [2025] KEELRC 1759 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1759 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
APPEAL E023 OF 2024  
MA ONYANGO, J  
JUNE 5, 2025**

**BETWEEN  
MOI TEACHING AND REFERRAL HOSPITAL ..... APPELLANT  
AND  
ROBINSON KAMAU NJUGUNA ..... RESPONDENT**

*(Being an application in respect of judgment and decree or order of the Chief  
Magistrates Court at Eldoret before Honourable Richard Odenyo, Senior  
Principal Magistrate dated 21st June, 2024 in Eldoret CMELRC No. 128 of 2022)*

**RULING**

1. The Respondent herein filed suit against the Appellant herein in Eldoret CMELRC No. 128 of 2022. According to the judgment, the Respondent herein who was the Claimant in the said suit prayed for a declaration that his services with the Respondent were terminated unfairly. He sought payment of Kshs. 1,726,623.34. He further prayed for a certificate of service and costs.
2. It is stated in the judgement that the Respondent who is the Appellant herein failed to file defence and interlocutory judgment was entered against it on 9<sup>th</sup> September, 2022. Formal proof hearing was on 2<sup>nd</sup> May, 2024 and judgment was delivered on 21<sup>st</sup> June, 2024.
3. In a very brief one pager judgement, the trial court held as follows:

I have considered the evidence presented to me by the Claimant and I note that there was no other version with which to compare the Claimant's. I thus reach a finding that the Claimant has proved his case to the required standard. I therefore enter judgement for the Claimant against the Respondent as prayed in the statement of Claim.
4. It is this judgement that is the subject of the appeal herein. The Appellant herein filed a Notice of Appeal dated 22<sup>nd</sup> July, 2024 together with a Memorandum of Appeal of the same date.



5. Vide an application dated 22<sup>nd</sup> July, 2024 now before me for determination, the Appellant seeks the following orders:
  - a. This application be certified as urgent and be heard as soon as possible.
  - b. There be a stay of execution pending the hearing and determination of this appeal.
  - c. The judgment issued by this honourable court on 21<sup>st</sup> June 2024 in civil case number 128 of 2022 be appealed on the ground that the case was heard without the defendant's evidence.
  - d. cost of this case be provided for.
6. The Application is premised on the grounds on its face and the supporting affidavit of JOSPHAT MUTUMA KIRIMA, counsel for the Appellant.
7. In summary the Appellant contends that it is dissatisfied by the judgment of the trial court and has lodged an appeal which has high chances of success. That the appeal would be rendered nugatory should the appeal succeed if the orders sought are not granted and that the Appellant stands to suffer irreparable loss and prejudice.
8. Upon being served by the Appellant the Respondent file a Notice of Preliminary Objection dated 16<sup>th</sup> September, 2024 on the single ground that the Memorandum of Appeal is fatally defective since it was filed out of the 30 days statutory period within which to lodge an appeal, thus time barred.
9. The Respondent further filed a replying affidavit sworn on 7<sup>th</sup> September, 2024 by Robinson Kamau Njuguna, the Respondent in which he states that the application herein is devoid of merit, frivolous, vexatious and brought in bad faith with the sole intention of depriving him of the money awarded to it by the trial court.
10. He deposes that the Appellant was granted several opportunities to defend itself but failed to do so. That no application has been made to set aside the default judgment and the applicant is forum shopping.
11. It is stated that the applicant filed strange pleadings at the trial court and never regularized the same after the trial court gave it an opportunity to do so.
12. That the trial court delivered its judgment on 21<sup>st</sup> June and granted the Appellant 30 days stay of execution which lapsed before the appeal was filed.
13. That on 21<sup>st</sup> July, 2024 when the stay lapsed no appeal had been filed and the appeal herein was filed out of time. That the notice of appeal is an alien document.
14. The Preliminary Objection and application were disposed of together by way of written submissions which both parties filed.
15. I have considered the application, the grounds and affidavit in support thereof, the replying affidavit and the notice of preliminary objection. The issues for determination are whether the preliminary objection is merited and whether the application by the Appellant has merit.
16. The preliminary objection is that the suit was filed out of time. From the court records the Respondent paid for the documents it filed in this court on 18<sup>th</sup> July, 2024. The documents filed included a notice of appeal, which the Respondent has referred to as an alien document.
17. The Appellant has demonstrated that after making payment, the court virtual platform was down and it was unable to access the same. This fact has not been rebutted by the Respondent.



18. This being the case, I find that the appeal was filed within the timeframe set out by law and is therefore properly in court. The preliminary objection is thus without merit and is dismissed.
19. On the prayers in the application, as already stated above the Appellant seeks stay of execution pending hearing and determination of the appeal. Stay of execution is provided for in order 42 rule 6 as follows:  
Order 42 rule 6 of the Civil Procedure Rules states 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.”
20. In the instant case there is an appeal on record which raises substantive issues that the court is called upon to determine. The amount in respect of which stay is sought, though not substantial, the Respondent has not indicated that he would be in a position to refund the same should the appeal succeed.
21. The Appellant is a public body fully funded by the Government and under Order 42 Rule 8 of the Civil Procedure Rules it is not required to deposit security. The said rule provides: -  
“No such security as is mentioned in rules 6 and 7 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.”
22. In the circumstances, I am persuaded that the Appellant has demonstrated to the court that the orders of stay of execution are merited. The Appellant’s application for stay of execution pending appeal is accordingly granted. The costs of this application shall be determined in the appeal.
23. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF JUNE 2025**

**MAUREEN ONYANGO**

**JUDGE**

