



REPUBLIC OF KENYA



KENYA LAW
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**Waema & 2 others v Mbugua & 4 others (Petition 8 of 2020)
[2025] KEELRC 2325 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2325 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION 8 OF 2020**

**M MBARÚ, J
JULY 31, 2025**

BETWEEN

**ROMAN WAEMA 1ST PETITIONER
LUCY KANYI 2ND PETITIONER
AHMED OMAR 3RD PETITIONER**

AND

**NICHOLAS MBUGUA 1ST RESPONDENT
PETER NJUNG'E 2ND RESPONDENT
GRACE NYAMBURA 3RD RESPONDENT
KENYA LONG-DISTANCE TRUCK DRIVERS AND ALLIED WORKERS'
UNION 4TH RESPONDENT
REGISTRAR OF TRADE UNIONS 5TH RESPONDENT**

RULING

1. The 1st, 3rd and 4th respondents, Nicholas Mbugua, Grace Nyambura and Kenya Long Distance Truck Drivers and Allied Workers' Union filed an application dated 5 May 2025 under the provisions of Article 25(c), 47, 50(1) of the *Constitution*, section 3A, 95 of the *Civil Procedure Act*, Order 9 rule 9, Order 42 rule 6, Order 50 Rule 6, Order 51 rule 1 to 3 of the Civil Procedure Rules, Rule 11, 17 of the Employment and Labour Relations Court (Procedure) Rules and seeking Orders:
 1. Spent.
 2. The court be pleased to grant leave to the firm of Aoko Githara & Company to come on record after judgment for the 1st, 3rd and 4th respondents.



3. Spent.
 4. The court be pleased to grant an interim stay of execution of the decree and/or decision of the court made on 30 April 2025 until the hearing and final determination of the intended appeal to the Court of Appeal by the 1st, 3rd and 4th respondents.
 5. Spent.
 6. Costs of this application be provided for.
2. The application is supported by Nicholas Mbugua, the 1st respondent, who has filed his Affidavit and avers that post judgment on 30 April 2025, the respondents instructed new advocates to appeal to the Court of Appeal. The respondents have already filed a Notice of Appeal and have an arguable appeal and will suffer substantial loss unless the judgment herein is stayed. The monetary award of Ksh. 2 million to be paid personally by the 1st, 2nd and 3rd respondents is high and imposes a direct and immediate financial burden. The recovery of which may be impossible should the appeal succeed. The directive requiring a comprehensive audit of the 4th respondent bank accounts dating back to 2016 imposes significant financial and administrative costs, alongside potential exposure to regulatory, legal and reputational consequences. Should the appeal succeed, this process would be irreversible.
 3. The intended appeal is arguable and has a high chance of success.
 4. Mbugua avers that he is the secretary general of the 4th respondent with the authority to make this application. Following the judgment herein, the respondents have appointed new advocates and wish them to come on record. Following the judgment, the respondents want to file an appeal, which will be rendered academic unless the orders of stay are granted.
 5. In reply, the petitioners filed Grounds of Opposition that the orders sought are untenable, vexatious and in abuse of court process, rendering the application fatally defective. The application is intended to waste court time and should be dismissed with costs.
 6. Both parties attended and filed written submissions, which are analysed, and the issues for determination are;
 1. Whether the court should allow new advocates for the respondents to come on record post judgment;
 2. Whether an order of stay of execution of the judgment herein delivered on 30 April 2025 should issue;
 3. Who should pay the costs?

Determination

7. Judgment herein was delivered on 30 April 2025, and the court issued various orders, allowing the respondents 60 days to comply and return to confirm compliance. Instead, the 1st, 3rd, and 4th respondents have opted to file the instant application.
8. Should the court allow the 1st, 3rd, and 4th respondents to appoint new advocates? These respondents will rely on the provisions of Order 9, Rule 9 of the Civil Procedure Rules. Under the Order,

When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court —



- a) upon an application with notice to all the parties; or
 - b) upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person, as the case may be
9. Order 9 of the Civil Procedure Rules is fundamentally protective. The client has the right to appoint new advocates provided that notice is given to the previous advocates to be replaced. The client must also obtain the consent of the outgoing advocates. In *Wainaina & another (Suing as the Legal Representatives of the Estate of John Wainaina Wangari - Deceased) v Shikomela & another* [2023] KEHC 27651 (KLR), the court highlighted that the core purpose of Order 9 Rule 9 of the Civil Procedure Rules was to shield advocates from unscrupulous clients who may delay switching advocates until after a judgment has been delivered and then dismiss their current advocates.
 10. In this case, despite the petitioner being against the respondents, this being a post-judgment matter, replacing their advocates under the provisions cited, there is no compliance. There is no notice to the previous advocates or any consent thereof.
 11. This renders the instant applicant fatally defective.
 12. The respondents have not addressed the issue in the written submissions.
 13. This I find to be deliberate.
 14. On the other issues identified, the respondents rely on the provisions of Order 42 rule 6 of the Civil Procedure Rules. The applicant has the onus to demonstrate that substantial loss may result if no order of stay is granted; that it has filed the application without undue delay; and that it has provided such security as the court may order for the proper execution of the decree or order. Except to argue that there will be substantial loss if the award of Ksh. 2 million is paid to the petitioners, who have no means to repay upon a successful appeal, the respondents have not addressed the conditions for stay.
 15. Being indigent is not sufficient grounds to stay a judgment. The petitioners hold a valid judgment of the court as held in *Kenya Power & Lighting Co. Ltd v Kigaita Ngare Unduthu & 36 others* [2020] KECA 97 (KLR). There is a valid expectation that they will enjoy the fruits of the judgment.
 16. The respondents have only filed a Notice of Appeal. Such intention has not been actualised in any manner or form. There is no Memorandum of Appeal attached to confirm the actualisation of the intended appeal.
 17. The motions under Order 42, Rule 6 of the Civil Procedure Rules have not been addressed. They are not satisfied. No security is offered for a justified cause.
 18. Fundamentally, the question of delay is crucial. Judgment was delivered on 30 April 2025, and the respondents applied on 8 May 2025. In the written submissions, the respondents assert that the application was filed within 5 days of the date of judgment. This is not correct.
 19. Indeed, order (6) of the impugned judgment allowed parties 60 days to report back to court. This was to enable the respondents to undertake an audit facilitated through the office of the Registrar of Trade Unions, the 5th respondent. No effort, however remote, has been made. Even where there is an intention to file an appeal, the basics of the judgment or security deposit are not addressed in the subject application. In the written submissions, the respondents offer a security bond. This ought to have been addressed under the Supporting Affidavit.
 20. On costs, the application being without merit, the 1st, 3rd and 4th respondents should meet the petitioner's costs.



21. Accordingly, having failed to meet the threshold for change of advocate and principles for the grant of stay, the application dated 5 May 2025 must fail and is hereby dismissed, with costs to the petitioners.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

