



REPUBLIC OF KENYA



KENYA LAW
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**Pannju Agencies Company Limited v Mwai (Employment and Labour Relations
Appeal E245 of 2023) [2025] KEELRC 2334 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2334 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E245 OF 2023**

**JW KELI, J
JULY 30, 2025**

BETWEEN

PANNJU AGENCIES COMPANY LIMITED APPELLANT

AND

PAUL MAINA MWAI RESPONDENT

RULING

1. The applicant aggrieved by the judgment of the court delivered on the 12th February 2025 filed a Notice of Motion dated 16th April 2025 under Sections 1A, 1B, 3, 3A, of the [Civil Procedure Act](#), and Order 51 rule 1, Order 42 Rule 6 and Order 22 Rule 25 of the [Civil Procedure Rules 2010](#), Article 159 of the [Constitution](#) of Kenya, 2010, and all other enabling provisions of law seeking for the following Orders-
 - a. Spent
 - b. That pending the hearing and determination of this Application inter partes, this Honourable Court be pleased to issue an interim Order of stay of execution on the Judgment Delivered on 12th day of February 2025, and any consequential decree ensuing therefrom extracted in facilitation of the execution process against the Appellant/Applicant in the matter of Milimani Employment and Labour Relations Court Appeal No. E245 of 2023: *Pannju Agencies Co. Ltd v Paul Maina Mwai*.
 - c. That pending the hearing and determination of the Appeal against the Judgment delivered in Milimani Employment And Labour Relations Court Appeal No. E245 of 2023: *Pannju Agencies Co. Ltd v Paul Maina Mwai*, this Honourable Court be pleased to issue an Order of stay of execution of the Judgment delivered on 12th day of February 2025, and any consequential decree ensuing therefrom extracted in facilitation of the execution process as against the Appellant/Applicant.
 - d. That costs for this Application be provided for.



2. Grounds of the application

- a. That notably, on the 12th day of February 2025, this Honourable Court delivered Judgment against the Appellant herein.
 - b. That however, the Appellant is completely dissatisfied with the Judgment on the basis of the grounds elucidated in the annexed Memorandum of Appeal. That the Appellant herein is apprehensive that the Respondent herein will execute against the Appellant herein if the orders sought for herein are not granted, since the stay of execution order lapsed on 27th March 2025.
 - c. That if the Respondent succeeds to execute as against the Appellant, the Appellant herein shall suffer substantial loss of over Kshs. 795,597.75/- which is exclusive of the costs and interests awarded as well as the impending auctioneer's fees that will be incurred as against the Appellant herein, rendering the intended Appeal nugatory and an academic exercise.
 - d. That that there has not been any inordinate delay in filing the present application and appeal.
 - e. That the intended Appeal has appreciable chances of success because despite the Respondent's failure to prove employer-employee relationship between the Appellant and the Respondent herein, the Honourable Court failed to appreciate the same and determined that the Respondent was an employee of the Appellant herein.
 - f. That the issuance of the orders as prayed shall not be prejudicial to the Respondents.
 - g. That importantly, the Appellant is ready and willing to take out a Bank Guarantee in favor of the Respondent for the decretal sum from a reputable financial institution as a condition for the issuance of the order of stay of execution of the judgment issued by this Honourable Court.
 - h. That this Honourable court is clothed with powers and jurisdiction to issue the orders as prayed.
 - i. That in view of the foregoing, it is only fair and in the interest of justice that the orders sought herein be granted as a matter of utmost urgency
3. The application was supported by the affidavit of Zinedine Kimamo Njogu , who averred was the applicant's Director, sworn on the 16th April 2025 and annexed the Judgment of the court, a copy of the Notice of the Appeal, and a draft of the memorandum of appeal. The applicant offered security of a bank guarantee.
4. The application was opposed by the respondent/appellant who filed grounds of opposition to the effect that the application was misconceived, incompetent and an abuse of court process and that further it lacked merit and was merely delaying satisfaction of the decretal sum. The Respondent further filed his replying affidavit dated 5th May 2025, whose contents the court noted.
5. The applicant filed a supplementary affidavit of Zinedine Kimamo Njogu dated 5th June 2025 and among other responses stated that it was willing to deposit in court half of the decretal sum being Kshs. 397,798.88 in good faith and to afford its continuity in operations.



Determination

Issue- Whether the application for stay was merited

Applicant's Submissions

6. On issue of substantial loss - The Applicant stands to suffer irreparable harm if the Respondent executes the decree before the appeal filed at the Court of Appeal is determined. There is a real risk that if the decree is executed, the Respondent may be unable to refund the amount in the event the appeal succeeds, rendering the appeal nugatory and an academic exercise. From the pleadings it is clear that the Respondent herein is acting as a former employee and a person with unknown means and therefore if the appeal succeeds and the decretal amount was paid in full, then the Appellant will not be able to trace him nor any of his assets to recover the said amounts. The applicant relies on the decision of the court in Bungoma HCMISCA No. 42 of 2011-*James Wangalwa & Another vs. Agnes Naliaka Cheseto* where it was held that: "The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail". In *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* [1986] KLR 410, the Court held that substantial loss is the cornerstone for granting stay and that a stay should be granted where the appeal would be rendered nugatory.
7. On issue of security- From the records, the Applicant has already indicated to the Court of its willingness to deposit half of the decretal sum in court, totaling to Kshs. 397,798.88/- as security and a sign of good faith. The courts have consistently held that security should not be punitive but should balance the interests of both parties. The Applicant will suffer substantially and will paralyze its operations completely if required to pay the full decretal amount. In *G.N. Muema P/A (Sic) Mt. View Maternity & Nursing Home v. Miriam Maalim Bisbar & Another* [2018] eKLR, the Court allowed a partial deposit of the decretal sum, acknowledging the need to balance the rights of both the appellant and respondent. Similarly, in *Ndubiu Gitabi & Another v. Anna Wambui Warugongo* [1988] eKLR, the Court emphasized that security should be reasonable and tailored to the circumstances of the case. The Applicant herein has exhibited a fair amount of unassailable, irrefutable and indubitable of good faith by requesting that it be allowed to deposit half of the decretal sum in court. That the court to allow the said sum to be deposited in court's custody pending the determination of the Appeal at the Court of Appeal lest the same be declared an academic exercise or nugatory in nature.
8. Balance of convenience- The balance of convenience favours the granting of a stay. The Respondent will not suffer prejudice as the Applicant has already shown willingness to deposit reasonable security being half the decretal sum, ensuring compliance with the decree should the appeal fail. In *Butt v. Rent Restriction Tribunal* [1982] KLR 417, the Court held that a stay should be granted to avoid rendering an appeal an academic exercise and to ensure justice is served.
9. The Applicant has already filed the Notice of Appeal, and the Memorandum of Appeal in good time as per the Law stating salient issues for the Appellate Court to determine. There are indeed triable issues that the Court should consider. Before this Honourable Court is an Application that merely seeks to maintain the substratum of the subject matter to allow parties to seek justice pursuant to Article 50 of the *Constitution*, 2010. Balance of convenience shifts towards the Applicant herein.
10. Status quo orders- The Applicant also seeks orders for the maintenance of the status quo as at the date of filing this application. It is the Applicant's submissions that the Respondent is taking steps that may render the appeal nugatory, including making false claims that the Notice of Appeal was filed out of



time and yet the same was filed on the 25th of February, 2025 after Judgment was delivered on the 12th of February, 2025. The Respondent wishes to dwell on technicalities that are non-existent. In the case of *Githunguri v Jimba Credit Corporation Ltd (No 2)* [1988] KECA 141 (KLR), the Court of Appeal held that where irreparable harm would be suffered if execution proceeds, a stay should be granted. It emphasized that a stay should not be granted merely to delay Justice but to preserve the status quo. There is a real risk that unless the status quo is maintained, the substratum of the appeal will be lost, thereby prejudicing the Applicant. The Respondent is not in a financial position to refund costs should the appeal succeed, necessitating the provision of security for costs to safeguard the Applicant's interests. The principle governing the grant of a status quo order pending appeal is that the Court must ensure that the subject matter of the appeal is preserved to avoid rendering the appeal an academic exercise. This was established in *Stanbic Bank Kenya Ltd v. Kitihinji Murugu* [2006] eKLR, where the Court held that preserving the subject matter of litigation ensures the effectiveness of an appeal.

Respondent's/Appellant's Submissions

11. The Applicant's Application seeks orders of stay of execution pending hearing and determination of intended Appeal against the judgment dated the 12th February, 2025. There are certain rules that one ought to comply with for such orders to be granted. The *Court of Appeal Rules* under Rule 77 states that; (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court. (2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged. The Applicant was required to lodge a Notice of Appeal within fourteen (14) days upon judgment. The annexed Notice of Appeal from the Applicant states that it was lodged in this court on the 1st April, 2025. This is thirty-three (33) days after judgment. The Applicant has not provided any evidence here to show that the same Notice of Appeal has been received and endorsed by the Deputy Registrar. This is failure to comply renders the notice a nullity. The Applicant's notice, filed out of time without an extension, is invalid. Consequently, there is no competent appeal pending to justify a stay of execution. Upon lodging, the applicant ought to serve the same to the Respondent within seven (7) days in accordance with Rule 79 of the *Court of Appeal Rules, 2022*. This was not met and therefore we pray that this application be dismissed with costs.
12. That further Rule 5(2)(b) of the *Court of Appeal Rules, 2022* being the substantive provision for accessing the relief sought, provides that; "in any civil proceedings where a notice of appeal has been lodged in accordance with rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just." In the case of *Daniel Maina Njoroge v James Ndegwa Gititu* [2021] KECA 960 (KLR) the court stated that; "On merits of the application, the position in law it is that in order to succeed under Rule 5(2)(b) of this *Court's Rules* an aggrieved party must satisfy two prerequisites namely, that the intended appeal/appeal is arguable. Second, that it will be rendered nugatory should the relief sought under Rule 5(2)(b) of the *Court's Rules* be withheld and the intended appeal/appeal ultimately succeed." It is evident that the Applicant has failed to satisfy the two prerequisites due to the fact that there is no valid intended appeal and notice of appeal before this honourable court. The Applicant's failure to regularize the appeal by seeking an extension under Rule 4 of the *Court of Appeal Rules, 2022* which provides for extension of time renders the stay application premature and unmerited. This even robs this Honourable court the jurisdiction to grant a stay for an appeal that is procedurally defective.



Decision

13. The basis of the grant of stay is as stated in section 46(2) of the *Civil Procedure Rules*. The Court of Appeal in *Butt -vs Rent Restriction Tribunal* (1982) KLR 417 (Madan J.A) gave guidance on how a Court should exercise discretion in an application for a stay of execution, that: -

“If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings.

It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church (No 2)* 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458: “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.” The court can only grant the stay if there is a valid Notice of Appeal before it. A Notice of Appeal was lodged in this court on the 1st April 2025. The judgment of the court sought to be appealed against was delivered on the 12th February 2025.

14. The respondent has submitted as follows:- “The Court of Appeal Rules under Rule 77 states that; (1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court. (2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged. The Applicant was required to lodge a Notice of Appeal within fourteen (14) days upon judgment. The annexed Notice of Appeal from the Applicant states that it was lodged in this court on the 1st April, 2025. This is thirty-three (33) days after judgment.”
15. The court finds the notice of appeal lodged with court and endorsed by the deputy registrar of the court was lodged out of time, being 14 days, under the *Court of Appeal rules*. The Court then finds that it lacks jurisdiction to grant orders sought for lack of a valid a notice of appeal. The applicant should, at the first instance have sought leave of the Court of Appeal to appeal out of time. For lack of a valid Notice of Appeal the application is disallowed. The stay was meant to allow appeal be canvassed. There is no valid notice of appeal. The court finds no basis to grant the stay.

Conclusion

16. The application is dismissed with costs to the respondent. The interim orders are set aside.
17. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF JULY, 2025.

**J. W. KELI,
JUDGE.**

In the presence of:

Court Assistant: Otieno



Appellant/Applicant : - Wairimu h/b Kori

Respondent: Modi

