



**Runo v Kenya Wildlife Service (Cause 1773 of 2016)  
[2025] KEELRC 2320 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2320 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1773 OF 2016**

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

**BETWEEN**

**GITONGA RUNO ..... CLAIMANT**

**AND**

**KENYA WILDLIFE SERVICE ..... RESPONDENT**

**RULING**

1. The applicant, Kenya Wildlife Service, was the respondent in the suit and being dissatisfied with the judgment of the court against it delivered on the 24<sup>th</sup> January 2025 filed a Notice of Motion application dated 20<sup>th</sup> February 2025 Under Rules 44 and 45 of the [Employment and Labour Relations Court \(Procedure\) Rules, 2024](#) and the inherent powers of the court seeking for the following orders-
  - a. Spent
  - b. There be a stay of execution of the judgment of 24<sup>th</sup> January 2025 and the resultant decree pending the hearing and determination of this application inter partes.
  - c. There be a stay of execution of the judgment of 24<sup>th</sup> January 2025 and the resultant decree pending the hearing and determination of the respondent's intended appeal to the Court of Appeal.
  - d. The costs of this application will be provided for.
2. Grounds of the application
  - a) On 24<sup>th</sup> January 2025, the court delivered judgment in favour of the claimant against the respondent. The claimant was awarded Kshs. 3,440,000.00 being 10 months' salary plus interest from the date of filing suit until payment in full. The claimant was also awarded gratuity and costs.



- b) The respondent is aggrieved by the judgment of this court and intends to appeal against it.
  - c) The respondent filed a Notice of Appeal and a letter to the Deputy Registrar requesting for typed copies of proceedings, both dated 6th February 2025, for purposes of filing an appeal to the Court of Appeal.
  - d) The respondent has an arguable appeal that raises serious issues for determination.
  - e) Following the delivery of the judgment on 24th January 2025, an order of stay of execution of 30 days was granted, which lapses on 23rd February 2025. Unless a stay of execution is granted, the claimant is likely to proceed with execution.
  - f) The respondent is apprehensive that in absence of an order of stay of execution pending the hearing and determination of the appeal, the claimant will commence execution thereby rendering the appeal nugatory.
  - g) The respondent does not have any knowledge of the claimant's means and assets or his ability to refund any sums that may be paid out. The respondent is apprehensive that it will not recover the sums it would have been made to pay in the event the appeal succeeds.
  - h) The respondent is willing to abide by any conditions imposed by the court for the grant of the stay of execution.
  - i) The application has been brought without undue delay.
  - j) It is just and fair that the application be allowed so as to safeguard the respondent's right of appeal and enable the respondent pursue the appeal.
3. The application was supported by the affidavit of Ismeke Feksi who annexed the impugned judgment and the Notice of appeal.

### **Response**

4. The Respondent/Judgment Holder, Gitonga Runo, was opposed to the application vide his replying affidavit sworn on the 4<sup>th</sup> March 2025, where among others he raised concern of failure by the applicant to compute his gratuity frustrating the issuance of final Decree in the suit. He further stated that the application was meant to frustrate him and stated he was 65 years old, ailing and required finances for health sustenance. That the application sought to stay issuance of a certificate of service notwithstanding that the employment was not disputed.

### **Determination**

5. The application was canvassed by way of written submissions. Both parties filed.

### **Issues for determination Whether the application for stay was merited.**

#### **The applicant's submissions**

6. According to Rule 73 of the *Employment and Labour Relations Court (Procedure) Rules 2024*, the test for the grant of a stay of execution pending appeal is as set out in Order 42, Rule 6 of the *Civil Procedure Rules*. Order 42 Rule 6(2) of the *Civil Procedure Rules* states that:

“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".

7. The test under Order 42 Rule 6 is not diminished in any way by the introduction of the principle of overriding objectives of the court as set out under section 3 of the [Employment and Labour Relations Act](#).
8. The test under Order 42 Rule 6 was outlined by the Court of Appeal in the case of [Halai & another v Thornton & Turpin Ltd](#) [1990] eKLR. The applicant must show that;
  - a. Substantial loss would result in the absence of a stay;
  - b. The applicant is willing to furnish security such security as the court orders; and
  - c. The application was made without unreasonable delay.
9. In [Butt vs Rent Restriction Tribunal](#) (1979) eKLR, the Court of Appeal stated:

"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... The court will grant a stay where special circumstances of the case so require."
10. On substantial loss- in [Rhoda Mukuma v John Abuoga](#) [1988] eKLR the Court of Appeal described substantial loss as the 'cornerstone' in an application for stay of execution pending appeal, stating:

"Granting a stay in the High Court is governed by Order XLI rule 4(2), the questions to be decided being (a) whether substantial loss may result unless the stay is granted and the application is made without delay; and (b) the applicant has given security. The discretion under rule 5(2)(b) is at large, but as was pointed out in the [Kenya Shell case](#) substantial loss is the cornerstone of both jurisdictions. That is what has to be prevented, because such loss would render the appeal nugatory." (See page 8 to 9 of the respondent's bundle of authorities)
11. The substantial loss that may occur in this case is specifically set out in the affidavit of Ismene Feksi and they form the special circumstances that warrant the grant of an order for stay of execution. The respondent stands to suffer substantial loss as -
  - i. The judgment sum is Kshs. 3,440,000 together with costs and gratuity. According to the claimant's computation of gratuity filed on 18th February 2025, the claimant will be claiming Kshs. 61,393,000 in gratuity. This is not a small sum.
  - ii. The respondent has no knowledge of the means and assets of the claimant or his ability to refund any sums that may be paid out by the respondent.
12. In [Boniface Kariuki Wahome vs Peter Nziki Nyamai & Another](#) (2019) eKLR, the High Court stated that: -

"It is expected that a respondent would depone and show the means she has to refund the decretal sum. It is enough for the applicant to depone that they are not able to refund. He cannot be expected to dig deep into the financial standing of the respondents, which is for the respondent to produce and prove."



This means that once the respondent has stated that the respondent's means and assets are unknown, the claimant bears the burden of proving that he will be able to refund the judgment sum if the appeal by the respondent succeeds on appeal. This is by a replying affidavit showing that he has the means and assets capable of refunding the judgment sum. In this case, the claimant has not indicated in his replying affidavit what are his means and assets and whether he will be able to refund the judgment sum if the respondent succeeds in its appeal. On the other hand, there is no risk that the respondent will be unable to pay the judgment sum if the appeal does not succeed as the respondent is a well-established state corporation.

13. The purpose of stay of execution is to preserve the subject matter in dispute while balancing the interests of the parties and considering the circumstances of the case. The Court of Appeal in [\*RWW vs. EKW\*](#) (2019) eKLR addressed itself on this as hereunder:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory.”

14. If the respondent were to succeed on appeal and be unable to recover the decretal amount from the claimant, the negative effect on the respondent's statutory functions would be irreversible, rendering the appeal nugatory.
15. Whether the application was made without unreasonable delay-Judgment was delivered on 24th January 2025. The court granted the respondent a 30-day stay of execution, which was to lapse on 23rd February 2025. The present application was filed on 20th February 2025 around 26 days after the judgment. The application was filed promptly and without any delay.
16. Security- The respondent is a state-corporation established by statute and fully funded by the Government of Kenya through taxpayer revenue. In SC Pet No. E022 of 2025 [\*Kenya Wildlife Service v Sea Star Malindi Limited\*](#), the Supreme Court held that:

“Further, as the dispute involves a statutory body funded by public coffers as rightly advanced by the appellant to which any monies paid out are subject to budgetary allocation. Being a public body, it is not necessary to offer security and in particular of such an amount, as to itself be an impediment to access to justice. To that extent therefore, we find that the application for stay has met the 3-prong test.”

17. Further, the Court of Appeal in [\*Halai & another v Thornton & Turpin\*](#) (*supra*) stated that:

“...this court is not prevented from granting stay of execution where no substantial loss is established and no security is forthcoming, if it seems just to the court for such order to be made upon application.”.

The Respondent is a well-established state corporation and there is no risk that it would not be able to pay the decretal amount in the event it does not succeed in the appeal.

18. Additional considerations- The respondent invites the court to consider that there is sufficient cause and to consider the principal objective which is set out in section 3 of the [\*Employment and Labour Relations Court Act\*](#) which is expeditious, efficient and proportionate resolution of disputes governed by the *Act*. In [\*Kenya Women Microfinance Ltd v Martha Wangari Kamau\*](#) [2020] eKLR, the Court



of Appeal held as follows regarding sections 1A and 1B of the *Civil Procedure Act* which is similar to section 3 of the *ELRC Act*.

“... whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 of the *Civil Procedure Rules* is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay. To the foregoing I would add that the stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in sections 1A and 1B of the *Civil Procedure Act*, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.”

19. The court should consider that the respondent should be given an opportunity to canvass the appeal since the respondent is a state -entity and there exists no risk that it will be unable to pay the decretal amount in the event it does not succeed in the appeal. The court will be facilitating the just and proportionate disposal of justice and resolution of the dispute by allowing an order for stay of execution pending appeal to allow the respondent pursue the appeal.

#### **Respondent's/Judgment Holder Submissions**

20. The Claimant opposed the Application vide his Replying Affidavit sworn on 4th, March, 2025. Mischievously through the Respondent prays for stay of execution pending intended Appeal to the Court of Appeal.
21. Judgment was delivered on 24.2.2025 in which the Respondent was ordered inter-alia to make computations of gratuity within 14 days which she did not comply with but filed current Application.
22. The recording of judgment on the aspect of gratuity is still pending before the trial judge. As it stands no decree has issued and neither can any execution issue in this circumstance.
23. Stay of execution is governed by Order 42 rule 6(2) *Civil Procedure Rules* as empowered by Rule 73 the *Employment and Labour Relations Court (Procedure) Rules, 2024*. Without a decree the twin conditions under Order 42 rule 6(2)(a) and (b) *Civil Procedure Rules* cannot be canvassed nor considered for reasons that-
  - (a) substantial loss may result is not capable of being ascertained.
  - (b) security for performance of decree may not be determined in the absence of decree capable of execution and performance.
24. The present Application has the effect of frustrating settling of the final decree herein and is an abuse of the processes of Court this Claim being 10 years in Court. The Application is bad in law and does not lie.



## Decision

25. Execution with respect to the court Judgment/ Decrees or Orders is per Rule 73 of the [Court \(Procedure\) Rules 2024](#) to wit:-

“73(2) Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the [Civil Procedure Rules](#).”

26. The relevant [Civil Procedure Rule](#) is Order 42(6) of the [Civil Procedure Rules](#) to wit:-

“(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.”

27. On requirement of security - The applicant in the instant case is a public body funded by the exchequer. It thus enjoys exemption from the requirement of security for performance of decree as stated in Order 42 Rule 8 as follows:-

“8. No security to be required from the Government [Order 42, rule 8.]

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.”

In SC Pet No. E022 of 2025 [Kenya Wildlife Service v Sea Star Malindi Limited](#), the Supreme Court held that:

“Further, as the dispute involves a statutory body funded by public coffers as rightly advanced by the appellant to which any monies paid out are subject to budgetary allocation. Being a public body, it is not necessary to offer security and in particular of such an amount, as to itself be an impediment to access to justice... To that extent therefore, we find that the application for stay has met the 3-prong test.”

The applicant submitted that for lack of final decree the application was premature as the total security sum was not determined. Taking into account the provisions of Order 42 Rule 8 above, I find that the lack of final decree was a technicality in the circumstances.

28. Whether the application was brought without unreasonable delay. The Applicant was granted a stay of 30 days on delivery of judgment being 24<sup>th</sup> January 2025. Before the expiry of the stay, the applicant filed the instant application seeking a stay pending an intended appeal. The court finds that there was no delay in filing the instant application.

29. On the condition of substantial loss, the court noted that this was a judgment of Kshs. 3,440,000 plus gratuity, costs and interest. The Respondent/judgment Holder did not file affidavit of means to demonstrate his financial capacity to refund the money in event of a successful appeal. The court



upholds the decision in *Boniface Kariuki Wabome vs Peter Nziki Nyamai & Another* (2019) eKLR, the High Court stated that: -

“It is expected that a respondent would depone and show the means she has to refund the decretal sum. It is enough for the applicant to depone that they are not able to refund. He cannot be expected to dig deep into the financial standing of the respondents, which is for the respondent to produce and prove.”

The claimant had burden to demonstrate financial muscle to refund the money, otherwise, the applicant’s appeal, if successful, would be rendered nugatory. The court finds the applicant has proved potential substantial loss of the decretal sum if paid before determination of the intended appeal in the event the appeal is successful.

30. The discretion of the court is then held to be in favour of allowing the appeal the applicant having met the conditions under Order 42 Rule 6 of the *Civil Procedure Rules* and guided by the decision of the Court of Appeal in *Butt -vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal (Madan JA) 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.”

31. In the upshot, application dated 20<sup>th</sup> February 2025 is allowed. The court is pleased to grant a temporary order of a stay of execution of the judgment dated 24th January 2025 pending the hearing and determination of the respondent’s intended appeal to the Court of Appeal.
32. Costs of the application to the respondent /judgment creditor.
33. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

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

In the presence of:

Court Assistant: Otieno

Applicant: Chepkwony h/b Ochieng

Respondent: -absent

