



REPUBLIC OF KENYA



KENYA LAW
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**Downtown Hotel v Mutua (Civil Appeal 131 of 2022)
[2025] KEELRC 2175 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2175 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL 131 OF 2022**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

DOWNTOWN HOTEL APPELLANT

AND

PETER ISSA MUTUA RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 19th May 2025, by which the Appellant seeks the following reliefs:
 - a. Stay of execution of the Warrants of Arrest issued against the Directors of the Appellant, by the Chief Magistrate's Court at Milimani on 1st April 2025 in CMEL No 1277 of 2019;
 - b. Review of the ruling delivered on 17th December 2024, by allowing the Appellant to secure the decretal amount of Kshs. 1,473,883.62 through a cash deposit in court or in an interest earning account;
 - c. Enlargement of time for the Appellant to comply with the conditions for the grant of stay of execution of the judgment in CMEL No 1277 of 2019;
 - d. Stay of execution of the decree issued in the matter pending the hearing and determination of ELRC Appeal No 131 of 2022.
2. The Motion is supported by an affidavit sworn by the Appellant's Director, Mohamed Madhbuti and is based on the following grounds:
 - a. That the Appellant had, through its Notice of Motion dated 9th December 2024, applied for a stay order, with respect to which the Court delivered its ruling on 17th December 2024, granting stay of execution of the judgment of the Chief Magistrate's Court at Milimani, in



CMEL No. 1277 of 2019, subject to the Appellant depositing the full decretal sum in court, within 14 days; in default, execution to proceed;

- b. That Warrants of Arrest for committal of the Appellant's Directors to civil jail were issued in the Chief Magistrate's Court at Milimani vide a ruling delivered by Hon Selina Muchungi, SRM on 1st April 2025, with respect to the Respondent's Notice to Show Cause dated 27th January 2025;
 - c. That the Appellant's Directors, Mohamed Madhbuti and Halima Mohamed both suffer from serious illness and are under constant medical supervision and care; in addition, Halima Mohamed is 72 years old;
 - d. That the Appellant is ready to secure the decretal amount of Kshs. 1,473,883.62 by a cash deposit as the Court directs;
 - e. That the appeal will be rendered nugatory if the ruling by the Chief Magistrate's Court at Milimani, in CMEL No 1277 of 2019, dated 1st April 2025 is effected;
 - f. That there is sufficient reason and in keeping with public policy and in the public interest to review the ruling delivered on 17th December 2024; vary the condition for the grant of stay of the judgment in CMEL No 1277 of 2019, and enlarge time for compliance with the condition;
 - g. That unless the orders sought are granted, the Appellant stands to suffer great loss and extreme prejudice, should the Respondent continue to advance execution of the decree issued in the Chief Magistrate's Court at Milimani, in CMEL No 1277 of 2019;
 - h. That the orders sought ought to be granted in the interest of fairness, substantive justice and realisation of the principal objective of the Court.
3. By its application, the Appellant seeks extension of time to comply with orders of stay of execution issued by the Court on 17th December 2024. In his affidavit in support of the application, the Appellant's Director, Mohamed Madhbuti depones that the Appellant is now ready to deposit the entire decretal sum either in court or in a joint interest earning account.
 4. While it is certain that the Appellant failed to comply with the stay orders granted on 17th December 2024, which orders consequently lapsed, leading to issuance of Warrants of Arrest by the trial court, I am persuaded that it is in interest of substantive justice, to allow the Appellant one more chance to make amends.
 5. I therefore direct that the entire decretal sum shall be deposited in court within the next seven (7) days from the date of this ruling. Thereafter, the parties will proceed to prosecute the appeal on priority basis.
 6. The costs of this application will be borne by the Appellant.
 7. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Guserwa for the Appellant



Mr. Munyoki for the Respondent

