



**Walker v Valar Fronteirs Limited (Cause 161 of 2018)
[2025] KEELRC 2210 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2210 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 161 OF 2018**

**K OCHARO, J
JULY 24, 2025**

BETWEEN

JOHN ROBERT WALKER APPLICANT

AND

VALAR FRONTEIRS LIMITED RESPONDENT

RULING

1. By a Notice of Motion Application dated 21st November 2024, the Respondent/Applicant seeks the following orders:
 1. That this Application be certified urgent and service thereof be dispensed with and the same be heard exparte in the first instance.
 2. That the Court is pleased to grant a stay of execution of the Judgment of Honourable Lady Justice Agnes Kitiku Nzei delivered on 8th November 2024, together with any resultant decree and any subsequent proceedings thereto, pending the interpartes hearing of this application.
 3. That the Honourable Court be pleased to issue an order of stay of execution of the Judgment of Honourable Lady Justice Agnes Kitiku Nzei delivered on 8th November 2024, together with any decree arising therefrom and any subsequent proceedings arising pending the hearing and determination of the intended appeal.
 4. That the Applicant herein do provide a bank guarantee from a reputable financial institution for the decretal sum herein as security for the due performance of the decree.
 5. That the Honourable Court do make such further or other orders as it may deem fit, just and equitable in the circumstances.
 6. That the costs of the application be provided for.



2. The Application is anchored on the grounds outlined on the face of the Application, and the supporting affidavit sworn by the Applicant on 21st November 2024.
3. The Claimant opposed the application based on the grounds of opposition dated 17th December 2024.
4. Outstanding for determination in the Application is limb [4], [5], [6], and [7] of the Application. This Court directed that the application be canvassed by way of written submissions, which the parties have filed.

The Application

5. The Applicant states that Judgment was delivered on 8th November 2024, for the Claimant in the sum of USD 135 761.18 plus interest and costs thereon.
6. Aggrieved by the aforementioned Judgment, the Applicant, on the same day of delivery of the Judgment, applied for certified copies of the Judgment, decree, and proceedings. Further, within the requisite period, they filed a Notice of Appeal.
7. They believe that they have a strong, arguable appeal against the Judgment herein.
8. They asserted that the Claimant, who was once their employee, was not a Kenyan citizen.
9. The Judgment sum, costs and interest cumulatively translate to a colossal sum of approximately Kshs. 20,000,000. The Respondent stands to suffer substantial loss if they are compelled to pay out the sum in satisfaction of the decree, only to succeed in their appeal in the Court of Appeal. A stay of execution is deserved in the circumstances.
10. They are willing to deposit with the Court a bank guarantee as security for the due performance of the decree should their appeal in the Court of Appeal fail, within 30 days of this Court's ruling on the instant application.

The Response

11. Resisting the application, Respondent fronts the following specific grounds:
 - i. The application is incurably defective, bad in law, and an abuse of the court process.
 - ii. The prayers therein are irregular, procedural, misconceived and intended to mislead this Court.
 - iii. There is no arguable appeal in respect of the procedure for or conduct of the proceedings which took place as provided by consent of the parties made on 22nd September 2024 and adopted by the court.
 - iv. It is trite law that an appeal does not lie from a consent of parties.
 - v. There is no arguable appeal in respect of prayers which were in any event not granted by the Court.
 - vi. No arguable appeal has been made out in the Memorandum of Appeal in respect of compensation for wrongful termination, which was discretionary in nature.
 - vii. No arguable appeal arises from the award of severance pay, which the Appellant acknowledges was owing.
 - viii. The Applicant has not provided the requisite and or adequate and or proper security as required by the law.



Analysis and Determination

12. From the material placed before this Court, I distil one broad issue for determination; whether the Applicant has met the prerequisites for a grant of stay of execution pending appeal.
13. Before I delve further into considering this sole issue identified for determination, I find it imperative to point out that Procedure Rules provide two mechanisms of resisting an application, response affidavits or grounds of opposition. I am of the firm view that it isn't without good purpose that the two different mechanisms are provided. They are intended to be used in different situations. An affidavit[s], where the application is solely resisted on facts, and or facts and points of law, so that should the Respondent feel compelled to cross-examine on the factual matters deposed in the affidavit, they can move the Court in the manner provided in the Rules to be allowed to. Grounds of opposition, where the application is being opposed purely on points of law.
14. The concerning practice by legal practitioners and litigants alike, of using the mechanism, grounds of opposition, advancing only facts in opposition to the application, is risky. Heed should be taken here.
15. The prerequisites that an Applicant must fulfil to qualify for a stay of execution pending appeal are well established. Order 42 Rule 6 of the Civil Procedure Rules states:

“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 referred 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 make such order thereon as may to it seem just and any person aggrieved by the order of stay may apply to the Appellate Court to have such orders set aside.

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 the decree or order, as may ultimately be binding on him, has been given by the Applicant.
16. Both Counsel for the parties, rightly acknowledged in their submissions, that the Court's power is discretionary, but it must be exercised strictly, bearing in mind the considerations set out in the above-stated provision.
 17. Counsel for the Respondent/ Applicant submitted that the Respondent /Applicant has demonstrated that if the orders of stay sought are not granted, it will suffer irreparable loss. Citing the decisions in James Wangalawa & Another v Agnes Naliaka Cheseto [2012]eKLR, Counsel submitted that substantial loss is the cornerstone of this court's jurisdiction.
 18. In support of the assertion that the Respondent/Applicant will suffer irreparable loss if the order of stay pending appeal isn't granted, Counsel submitted that the decretal sum is colossal. The Claimant is a foreigner with no known residence or source of income. The success of the intended appeal shall be rendered nugatory.



19. Time and again, this Court has stated that it isn't enough for the Applicant to just state in the application and or the affidavit in support of the application, that they will suffer irreparable loss if the orders of stay aren't granted. They must sufficiently demonstrate what kind of loss will be suffered. I have carefully considered the grounds on the face of the Notice of Application before this Court, and the affidavit in support of the application, and take the view that they do not in any sufficient manner or at all, demonstrate what substantial loss the Applicant will suffer.
20. In the supporting affidavit, the deponent only deposed that he believes the Claimant is a foreigner. He didn't bring it out; the aspect of citizenship could be linked to substantial loss.
21. This Court notes the Respondent's Counsel's submissions that the Claimant is a foreigner with no known residence and means of income. These are matters that do not flow from the application or the affidavit in support thereof. As submissions can never be a substitute for evidence, affidavits and or pleadings, these submissions cannot come to the aid of the Respondent's application on matters not stated in the affidavit or the application itself.
22. The fact that the decretal sum is huge doesn't in itself constitute the irreparable loss contemplated under Order 42 rule 6. It cannot be a factor that automatically hands an order of stay to an Applicant.
23. In the premises, I find that the Applicant has failed to demonstrate that they will suffer irreparable loss if the orders of stay sought aren't granted. Substantial loss being the cornerstone of this Court's jurisdiction on matters of application for stay of execution pending appeal, and in light of the failure on the part of the Respondent/Applicant, this Court finds it unnecessary to proceed to consider the other two factors; the promptness in filing of the application, and the aspect of provision of security.
24. The Applicant's application is dismissed with costs on the account of failure to establish that they will suffer substantial loss.

READ SIGNED AND DELIVERED THIS 24TH DAY OF JULY 2025.

OCHARO KEBIRA

JUDGE.

