



**Radar Limited v Ngoseywi (Appeal E131 of 2024)  
[2025] KEELRC 2219 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2219 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E131 OF 2024  
DKN MARETE, J  
JULY 23, 2025**

**BETWEEN**

**RADAR LIMITED ..... APPLICANT**

**AND**

**PATRICK ONYINO NGOSEYWI ..... RESPONDENT**

**RULING**

1. This is an application by way of Notice of Motion dated 23rd April 2024. It seeks the following orders of court;
  1. That this Application be certified as urgent and the same be heard on a priority basis and exparte.
  2. That this honourable court be pleased to grant leave to the Applicant/Appellant to file the Appeal out of time against the Judgment of Hon. S. N. Muchungi (SRM) delivered on 19th October 2023 in MCELRC/E813/2021 and the attached Memorandum of Appeal be deemed to be properly filed in court.
  3. That the said leave be allowed to operate as stay of all proceeding in MCELRC/E813/2021 pending the hearing and determination of the Application inter parte.
  4. That pending hearing and determination of the intended Appeal herein this Honourable Court be pleased to grant a stay of execution of the judgment and orders of Hon. Selina N. Muchungi (Mrs) SRM in MCELRC/E813/2021 deliver on 19<sup>th</sup> October, 2023.
  5. That pending hearing and determination of this Application interpartes this Honourable court be pleased to grant termprary orders of stay of execution of the judgment and orders of Hon. S. N Muchungi(SRM) delivered on 19<sup>th</sup> October, 2023.



6. That pending hearing and determination of the intended Appeal herein the Respondent his agents, workers, auctioneers or anyone acting on his behalf be restrained from attaching, selling transferring advertising for sale or dealing in any manner whatsoever with the Applicants goods.
7. That costs of this application be provided for.
2. The application is premised on Sections 1A, 1B, 3A, 75, 78, and 79G of the [Civil Procedure Act](#), Order 42 Rule 6 and Order 40 of the [Civil Procedure Rules](#), and Rule 8 of the [Employment and Labour Relations Court \(Procedure\) Rules](#), 2016.
3. The background of this matter is that the trial court delivered a judgment on 19th October 2023, awarding the Respondent various sums totaling Kshs. 1,255,602.00, including damages for failure to secure another job, unpaid housing allowance, unpaid overtime, and gratuity. The Appellant, dissatisfied with this judgment, filed the present application, citing delays in obtaining typed and certified proceedings as the reason for the late filing of the appeal.
4. The Respondent opposes the application, arguing that the Appellant has not provided sufficient reasons for the delay and that the firm of Wachakana & Co. Advocates is improperly on record for failure to comply with Order 9 Rule 9 of the [Civil Procedure Rules](#).
5. Section 79G of the [Civil Procedure Act](#) provides that an appeal from a subordinate court must be filed within 30 days from the date of the decree or order appealed against. However, the court may admit an appeal out of time if the appellant demonstrates good and sufficient cause for the delay.
6. The Applicant attributes the delay to the time taken to obtain typed and certified proceedings from the trial court. The court notes the letter dated 22nd April 2024, annexed to the Supporting Affidavit, requesting for the proceedings. While the Respondent contends that the Appellant could have filed the appeal and amended it later, the court finds that the delay, though not insignificant, is not inordinate. The principles set out in the authority of [Thuita Mwangi v Kenya Airways Ltd](#) [2003] eKLR guide this court in exercising its discretion. The delay is explained, and the intended appeal raises arguable issues, particularly regarding the trial court's award of damages and allowances without sufficient evidence.
7. The other issue raised in opposition to the application is on the propriety of Wachakana & Co. Advocates on Record for the applicant. The Respondent submits that the firm of Wachakana & Co. Advocates is improperly on record for failure to comply with Order 9 Rule 9 of the [Civil Procedure Rules](#) which mandates court approval for a change of advocate after judgment. The Applicant, however, clarifies that Wachakana & Co. Advocates came on record by way of a Notice of Appointment of Advocates and not a Notice of Change, as Mwamuye Mzungu Solomon Advocates remain on record. This court finds this distinction material. Order 9 Rule 9 applies where there is a change of advocate, not where an additional advocate is appointed. The Respondent's objection on this ground is therefore without merit.
8. Order 42 Rule 6 of the [Civil Procedure Rules](#) sets out the conditions for granting a stay of execution pending appeal. The Applicant must demonstrate substantial loss, file the application without unreasonable delay, and provide security. The Applicant argues that substantial loss will occur if the decretal sum is paid as the Respondent may be unable to repay it should the appeal succeed. This contention is supported by the holding in the authority of [National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another](#) [2006] eKLR where the court emphasized that the evidential burden shifts to the Respondent to demonstrate the ability to repay. The Respondent has not discharged this burden. Further, the application was filed within a reasonable time after the judgment,



and the Applicant has expressed willingness to provide security. In the interest of justice, the court finds it prudent to grant a conditional stay to preserve the subject matter of the appeal.

9. The Applicant seeks temporary orders to restrain the Respondent from attaching or selling its properties. The principles for granting an injunction, as outlined in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, require the Applicant to demonstrate a prima facie case, irreparable injury, and the balance of convenience. The court is satisfied that the Applicant has established a prima facie case with arguable grounds of appeal. The balance of convenience tilts in favor of maintaining the status quo pending the determination of this appeal.
10. I am therefore inclined to allow the application and order as follows
  - i. The application to file the appeal out of time is allowed.
  - ii. The Memorandum of Appeal annexed to the application shall be deemed duly filed upon payment of the requisite fees.
  - iii. A stay of execution of the judgment and orders delivered on 19th October 2023 is allowed pending the hearing and determination of the appeal.
  - iv. The Appellant is ordered to deposit the entire decretal amount in court within 30 days of this ruling of court.
  - v. The Respondent is restrained from attaching, selling, or interfering with the Appellant's properties pending the determination of the appeal.
  - vi. Each party shall bear their costs of this application.

**DELIVERED, DATED AND SIGNED THIS 23<sup>RD</sup> DAY OF JULY 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Wachakana instructed by Wachakana & Company Advocates for the Appellant/Applicant.

Mr. Wetaba instructed by Wetaba, Were & Associates Advocates for the Respondent.

