



**Flamingo Horticulture Kenya Limited v M'Mbui (Appeal
E002 of 2025) [2025] KEELRC 2382 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2382 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
APPEAL E002 OF 2025
ON MAKAU, J
AUGUST 14, 2025**

**BETWEEN
FLAMINGO HORTICULTURE KENYA LIMITED APPELLANT
AND
STANLEY MBAABU M'MBUI RESPONDENT**

RULING

1. The ruling herein relates to the Appellant's Notice of Motion dated 25th March 2025 seeking the following orders: -
 - a. This Application be certified urgent and heard ex-parte in the first instance.
 - b. The Honorable Court be pleased to stay further proceedings before the Lower court in the Chief Magistrates Court at Meru Employment and Labour Relations Court case No.E005 of 2024 between Stanley Mbaabu M'mbui vs Flamingo Horticulture Kenya Limited pending the hearing and determination of this Application.
 - c. The Honorable Court be pleased to stay further proceedings before the Lower court in the Chief Magistrates Court at Meru Employment and Labour Relations Court case No.E005 of 2024 between Stanley Mbaabu M'mbui vs Flamingo Horticulture Kenya Limited pending the hearing and determination of this Appeal.
 - d. The costs of this Application be provided for.
2. The motion is supported by the Affidavit sworn on 25th March 2025 by Andrey Namwakira, the Applicant's Legal Officer and it was opposed by the respondent vide a Replying Affidavit sworn by his Advocate, Hillary Sandi on 28th March 2025.
3. In brief, the applicant's case is that it applied for striking out of the respondent's suit in the lower court for being filed out of time; for seeking orders which are the preserve of the High Court; and



for offending section 51(1) & (2) of the Work Injury Benefit Act and for being res judicata. It further averred that the trial court dismissed the motion and it has since appealed against the said dismissal, and it now seeks stay of the proceedings in the lower court pending the hearing and determination of the appeal. As such it contended that unless the lower court proceedings are stayed the hearing will proceed contrary to section 90 of the Employment Act and the appeal will be rendered nugatory.

4. The respondent's case, on the other hand is that the motion is a delaying tactic and if granted, it will deny him an opportunity to be heard and have his suit decided on its merits. He further averred that the lower court has jurisdiction to determine the suit, and there was leave granted to file the suit out of time in Misc.Application No. E007 of 2024.
5. The motion herein was canvassed by written submissions. I have considered the motion, affidavits and written submissions. The issue for determination is whether the applicant has met the threshold for granting stay of proceedings pending appeal.
6. In *William Odhiambo Ramogi & 2 others v Attorney General & 3 others* (2019) eKLR, the High Court laid out the six principles for granting stay of proceedings pending the hearing and determination of appeal, thus: -
 - a. First, there must be an appeal pending before the higher court;
 - b. Where such stay is sought in the court hearing the case as opposed to the higher court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the applicant should explain why the stay has not been sought in the higher court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the court to which an appeal is preferred because such a court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay or proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay."
7. The court has discretion to grant or not to grant stay of proceedings. The discretion must be grounded upon genuine reasons. As per the High court decision in *William Odhiambo Ramogi* case above, the court ought to consider several factors including, existence of an appeal in a higher court, that the appeal raises substantial questions for determination or is otherwise arguable; the appeal would be rendered nugatory unless stay of proceeding is granted; that the application for stay was filed without unreasonable delay.



8. In this case, there is already an appeal on record challenging the whole proceedings in the lower court. Having considered the material before the court, I am satisfied that the appeal is not frivolous. I say so because in the case of *Divecon v Samani* (1995-1998) 1 EA P.48 the Court of Appeal held that: -

“...to us, the meaning of section 4(1) is clear beyond doubt. It means that no one shall have the right or power to bring, after the end of six years from the date on which a cause of action arose, an action founded on contract. The corollary to this is that no court may or shall have the right or power to entertain what cannot be done, namely, an action that is brought in contract six years after the cause of action arose or any application to extend such time for bringing of the action...”

9. The appeal herein will be rendered nugatory if the trial in the lower court will be allowed to proceed with trial to conclusion. The application was made within one month after the impugned decision was passed. Finally, I find that the circumstances of this case demand that I grant the order of stay of proceedings as prayed in the notice of motion dated 25th March 2025. Costs shall be in the appeal.

DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF AUGUST, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

