



**Wakahia v Echo Network Africa (Petition E065 of 2022)
[2024] KEELRC 1989 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1989 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E065 OF 2022**

**L NDOLO, J
JULY 31, 2024**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 31(D),
41(1),47,50(1),258(1) & 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 35(1)(C),36,41,43,44,45,47(3)
(5),49,50 AND 51 OF THE EMPLOYMENT ACT**

AND

**IN THE MATTER OF SECTIONS 14 AND 16 OF
THE COMPUTER AND CYBERCRIMES ACT, 2018**

BETWEEN

TERESIAH NYAMBURA WAKAHIA PETITIONER

AND

ECHO NETWORK AFRICA RESPONDENT

RULING

1. By its Notice of Motion dated 12th March 2024, the Respondent seeks stay of further proceedings in this Petition pending the full hearing and determination of the intended appeal arising out of Employment and Labour Relations Court Petition No E064 of 2022: Margaret Wairimu Mbugua v Echo Network Africa.
2. The application is supported by an affidavit sworn by the Respondent’s Head of Legal Affairs, Teresa Wanja Mwaura, and is premised on the following grounds:



- a. That judgment was delivered on 23rd February 2024 in Employment and Labour Relations Court Petition No E064 of 2022: Margaret Wairimu Mbugua v Echo Network Africa in favour of the Petitioner;
 - b. That Employment and Labour Relations Court Petition No E064 of 2022: Margaret Wairimu Mbugua v Echo Network Africa is similar to this matter, since the Petitioners in both matters were terminated from employment arising out of the same events;
 - c. That the Respondent being dissatisfied with the judgment in ELRC Petition No E064 of 2022 lodged a Notice of Appeal dated 23rd February 2024 within time;
 - d. That the outcome of the intended appeal will directly affect this matter;
 - e. That it is in the interest of justice that the orders sought are granted.
3. The application is opposed by an affidavit sworn by the Petitioner’s Counsel, Clarise Mmbone Osore, on 2nd April 2024.
 4. Counsel confirms the existence of a separate matter filed by her on behalf of the Petitioner’s former colleague and that the termination of the employment of the Petitioner and her said colleague occurred on the same date.
 5. Counsel adds that this matter was filed on 20th April 2022 while ELRC Petition No E064 of 2022: Margaret Wairimu Mbugua v Echo Network Africa was filed on 19th April 2022. She asserts that the Respondent had ample time and opportunity to apply for stay of proceedings or consolidation of the two cases but instead waited for the conclusion of one of the cases before moving the Court.
 6. The Petitioner asserts that the two matters arise out of different employment contracts with different terms and job descriptions.
 7. The Petitioner and her Counsel are said to be unaware of any appeal against the judgment in Petition No E064 of 2022.
 8. The Petitioner accuses the Respondent of delaying the hearing and determination of her Petition, having caused adjournment five times, in addition to failing to pay adjournment costs twice.
 9. The single issue for determination in this application is whether the Respondent has made out a case for stay of proceedings. In her written submissions dated 9th May 2024, the Petitioner cites the decision in Nairobi HC Winding-UP Cause No 43 of 2000: Global Tours & Travel Ltd where the Court stated as follows:

“...whether or not to grant a stay of proceedings or further proceedings...is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order for stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And, in considering those pros and cons, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilisation of judicial time and whether the application has been brought expeditiously.”



10. The Petitioner further relies on Kenya Wildlife Service v James Mutembei [2019] eKLR where it was held that:

“...Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent...”

11. The Petitioner submits that there is no pending appeal against the judgment in Petition No E064 of 2022 pointing out that the 60 days’ period allowed for filing of an appeal had lapsed.

12. The Petitioner further submits that the application was not brought expeditiously, noting that it was filed a day before the scheduled hearing of her Petition, on 13th March 2024.

13. The Respondent premises its application on an appeal against the judgment delivered by my sister Rutto J in Nairobi ELRC Petition No E064 of 2022: Margaret Wambui Mbugua v Echo Network Africa, whose facts are said to be similar to the present Petition. The Petitioner however states that there is in fact no such an appeal and in any event, the period for filing an appeal had lapsed.

14. The Respondent did not bother to respond to the assertion that it has no appeal pending before the Court of Appeal against the judgment in Petition No E064 of 2022, leaving the Petitioner’s averment unchallenged.

15. Further, according to the court record, the two matters were moving together at the pre-trial stage. The Court was therefore unable to understand why the Respondent did not apply for their consolidation at the time Petition No E064 of 2022 proceeded before Rutto J.

16. As held in Port Florence Community Health Care v Crown Health Care Limited [2022] eKLR an order for stay of proceedings is an equitable relief, available only to parties that come to court expeditiously and with clean hands.

17. The Respondent has failed the test in many respects; first, its application came late in the day after it had occasioned adjournment a record five times and failing to pay costs imposed by the Court. This, coupled with the Respondent’s failure to demonstrate the existence of an appeal before the Court of Appeal makes it impossible for the Court to exercise discretion in favour of the Respondent.

18. The application dated 12th March 2024 is therefore declined with costs to the Petitioner.

19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY JULY 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Osore for the Petitioner

Mr. Museve h/b for Ms. Guserwa for the Respondent

