



Kenya Power and Lighting Company v Centoil Limited (Civil Appeal E034 of 2024) [2024] KEHC 10504 (KLR) (27 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E034 OF 2024
LM NJUGUNA, J
AUGUST 27, 2024**

BETWEEN

KENYA POWER AND LIGHTING COMPANY APPLICANT

AND

CENTOIL LIMITED RESPONDENT

RULING

1. The appellant/applicant filed a notice of motion dated 12th April, 2024, which is supported by the grounds set out on its face and the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
 1. Spent;
 2. That this honourable court be pleased to stay the execution of decree in respect of the judgment given favour of the respondent against the Appellant/Applicant on 2nd April 2024 in SCCOMM No. E005 of 2024 and any other orders that may be issued pursuant thereto, pending inter parties hearing and determination of the application;
 3. That this honourable court be pleased to stay the execution of decree in respect of the judgment given in favour of the respondent against the Appellant/Applicant on 2nd April 2024 and any other orders that may be issued pursuant thereto pending hearing and determination of the appeal;
 4. That this honourable court be pleased to set aside the judgment entered against the appellant on 2nd April 2024 in SCCOMM No. E005 of 2024 together with all consequential orders as against the applicant;
 5. That in the alternative, this honourable court do grant leave to the applicant to be allowed to defend the suit in SCCOMM No. E005 of 2024 on its merit;



6. That upon grant of prayer 5 above, leave be granted to the appellant to file its list of witnesses and witness statements within 14 days from the date of this order;
 7. That this honourable court be pleased to make or issue such orders as it may deem fit to grant; and
 8. That the costs of this application be provided for.
2. The applicant deposed through counsel that it was served with the pleadings of 12th March 2024 and on 20th March 2024, it filed a preliminary objection on the ground that the respondent was statutory time-barred from instituting proceedings against the applicant. That on 26th March 2024, the court dismissed the preliminary objection and the parties were directed to file their written submissions by 28th March 2024 and judgement was scheduled for 2nd April 2024.
 3. That the applicant failed to comply with these directions since the applicant's counsel had a medical emergency involving her child and when she returned to work, she found that judgment had been entered against the applicant in the sum of Kshs.581,750.27/= with interest. She urged that the misfortunes of an advocate should not be visited on the client. That the appeal has high chances of success but it will be rendered nugatory if the respondent is left to execute the decree. The applicant stated that it was willing to comply with any conditions that the court may impose as per Order 42 Rule 6 of the Civil Procedure Rules.
 4. The application is unopposed. The court directed parties to file their written submissions but none of the parties complied.
 5. The issue for determination is whether the application has merit.
 6. Stay of execution orders may be granted when the court is satisfied of the parameters set out in Order 42 Rule 6(2) of the Civil Procedure Rules 2010 as follows:
 - (2) No order for stay of execution shall be made under subrule (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 such decree or order as may ultimately be binding on him has been given by the applicant.
 7. The applicant seeks, inter alia, stay of execution pending hearing and determination of the appeal. It has annexed to the application, a draft copy of the memorandum of appeal detailing the grounds of appeal. It is its case that the respondent may proceed to execute the decree and that the appeal raises plausible and triable issues. That it is willing to comply with any conditions set by the court to facilitate this order. The respondent did not oppose the application.
 8. I do note from perusing the memorandum of appeal, that orders 4, 5 and 6 sought herein are the substantive prayers in the appeal. Therefore, they will not be considered through this application for stay of execution.
 9. In my view, and in the circumstances, the application has merit and it is hereby allowed with the following orders issuing:
 - a. Pending hearing and determination of the appeal, stay of execution of the decree issued on 2nd April 2024 in SCCOMM No. E005 of 2024 is hereby granted on condition that the applicant deposits half of the decretal amount in court within 14 days of this ruling;



- b. Upon complying with (a) above, the appellant to file and serve the record of appeal within 14 days from the date of compliance.
- c. The appeal to be prosecuted within 90 days from the date of filing of the record of appeal failing which the stay orders shall lapse.
- d. Costs of the application shall abide the outcome of the appeal.

10. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF AUGUST, 2024.

L. NJUGUNA

JUDGE

..... for the Appellant /Applicant

.....for the Respondent

