



**Kenya Power & Lighting Company v Seroney (Civil Appeal
E035 of 2022) [2023] KEHC 2006 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E035 OF 2022
HK CHEMITEI, J
MARCH 16, 2023**

BETWEEN

KENYA POWER & LIGHTING COMPANY APPLICANT

AND

JONATHAN SERONEY RESPONDENT

RULING

1. In its notice of motion dated September 5, 2022 the applicant prays that there be interim orders of stay of execution of the judgement and decree of March 15, 2022 in Nakuru CMCC 247 of 2017 Jonathan Seroney v. KPLC pending the hearing and determination of the appeal herein
2. The application is supported by the sworn affidavit of David Syengo dated the same date and the grounds on the face of the application.
3. The respondent sued the applicant at the lower court and obtained a liquidated judgement sum of Kshs 9,586,200 together with costs and interest. The applicant being dissatisfied with the same lodged an appeal to this court. it went further and sought a stay of the said judgement pending appeal and the trial court disallowed it stating that it had not met the conditions for granting such a stay.
4. The applicant has filed similar application and it argued that it stands to suffer loss and damage should the application not be allowed and the appeal shall be rendered nugatory.
5. The respondent *vide* the replying affidavit sworn on October 5, 2022 has opposed the same. He argued that the application is meant to delay the enjoyment of the fruits of the judgement and at any rate he was capable of refunding the amount in the event that the appeal succeeds.
6. He further argued that the applicant has not preferred any security pending the outcome of the said appeal which in his estimation does not stand a chance.



7. The court directed the parties to file written submissions which they have complied. The same basically gravitate around the provisions of order 42 rule 6 of the *Civil Procedure Rules*.
8. The same states as hereunder;
9. Taking the totality of the facts herein, all that this court needs to see is whether the parties have brought themselves within the purview of the above cited portion of the law. As to whether the appeal is meritorious or not is not for this court to address the same at the moment. That will be done at an opportune time.
10. Suffice to state that while the applicant is praying for the stay orders, the interest of the winning party at the trial court ought to be taken into considerations. There must be a win win situation for both parties.
11. It has not been disputed that the respondent may not refund the decretal sum in the event that the appeal succeeds. At the same time, it should not be assumed that because the applicant is a public body it will automatically be in a position to settle the judgement debt in the event that the appeal fails. Even large corporations which at time look invincible faces liquidity issues and this court will not be merely persuaded by such clichés.
12. In the premises, this application is allowed as hereunder;
 - (a) The applicant within 30 days from the date herein shall pay to the respondent the sum of Kshs 3 million and the balance shall await the outcome of the appeal.
 - (b) In default of (a) above the respondent shall be at liberty to execute for the full amount.
 - (c) Costs of this application shall be to the respondent.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 16TH DAY OF MARCH 2023.

H. K. CHEMITEL.

JUDGE.

