



**Kiteke v Unigroup Transporters Limited (Appeal E064 of 2021)
[2024] KEELRC 13648 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13648 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E064 OF 2021**

**AK NZEI, J
MAY 16, 2024**

BETWEEN

JOSEPH KINYAE KITEKE APPELLANT

AND

UNIGROUP TRANSPORTERS LIMITED RESPONDENT

*(Being an appeal on the whole Ruling by Hon. M.L. Nabinya at Mombasa
delivered on 26th day of August 2021 in ELRC No. 458 of 2019)*

RULING

1. Vide its judgment delivered on 31st July 2023, this Court allowed the Appellant’s appeal herein and decreed as follows:-
 - “(a) the trial Court’s ruling in Mombasa CM ELR Case No. 458 of 2018 delivered on 26th August 2021 is hereby set aside.
 - b. the Lower Court’s judgment that was scheduled for delivery on 10th June 2021 shall be rescheduled for delivery forthwith, and shall be delivered.
 - b. costs of the appeal are awarded to the Appellant.”
2. On 21st December 2023, over four (4) months from the date of delivery of this Court’s said judgment, the Respondent filed an evenly dated Notice of Motion seeking the following orders:-
 - a. that the application be certified urgent.
 - b. that this Court be pleased to issue a stay of proceedings in ELRC Cause No. 458 of 2018 MSA (Joseph Kinyae Kiteke -vs Unigroup Transporters Ltd) pending hearing and determination of prayer 3 of the application inter-partes.



- c. that the Court be pleased to issue a stay of execution of the judgment and order of this Court dated 31st July 2023 in terms of stay of proceedings in ELRC Cause No. 458 of 2018 MSA (Joseph Kinyae Kiteke -vs- Unigroup Transporters Ltd) pending hearing and determination of the applicant’s appeal to the Court of Appeal therefrom.
 - d. that costs be provided for.
3. The application, expressed to be brought under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, and 3A of the *Civil Procedure Act*, is based on a supporting affidavit of Teddy Onyango, the Respondent/Applicant’s Legal Officer, sworn on 20th December 2023. It is deponed in the said affidavit that the Respondent/Applicant intends to appeal against this Court’s judgment and has filed a Notice of Appeal, that parties had attended the trial Court on 19/10/2023 for taking of directions on final judgment, and that the matter was set for mention on 1st February 2024, hence the application for stay pending appeal.
 4. The application is opposed by the Appellant/Respondent vide a replying affidavit sworn on 20th February 2024.
 5. The application was first placed before me on 6th February 2024. I declined to either certify the application as urgent or to issue interim orders of stay of proceedings in the lower Court, as I found no reason to do so. The single issue for determination in the application herein is whether the order for stay of proceedings in the lower Court suit is merited.
 6. This Court, vide its judgment delivered on 31st July 2023, directed the trial Court to reschedule for delivery its judgment which had previously been scheduled on 10th June 2021, but which was never delivered in view of the said Court’s subsequent orders which were the subject in the appeal herein. This Court having set aside the said orders vide its judgment that was delivered on 31st July 2023, and taking into account the delay in filing the present application, which delay contravenes Order 42 Rule 6(2) (a) of the Civil Procedure Rules, there is absolutely nothing to be stayed.
 7. I find no merit in the Notice of Motion dated 21st December 2023, and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16TH MAY 2024

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Appellant

.....Respondent

