



**Guantai v Great Lakes Ports Limited (Cause 5 of 2019)
[2024] KEELRC 1893 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1893 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 5 OF 2019**

**AK NZEI, J
JULY 18, 2024**

BETWEEN

JOSEPHINE KAGWIRIA GUANTAI CLAIMANT

AND

GREAT LAKES PORTS LIMITED RESPONDENT

RULING

1. The application before me is the Respondent’s Notice of Motion dated 9/8/2023 and expressed to be brought under Order 42 Rule 6, Order 51 Rule 1 of the [Civil Procedure Rules](#); and Section 13 of the [Employment and Labour Relations Court Act](#). The Respondent/Applicant seeks the following orders:-
 - a. That there be a stay of execution of the judgment delivered on 24th November 2022 and the resultant decree pending inter-partes hearing and determination of the application.
 - b. That there be a stay of execution of the Judgment delivered on 24th November 2022 and the resultant decree pending the hearing and determination of the appeal in Mombasa Court of Appeal Civil Appeal No. E061 of 2023 (*Great Lakes Ports Limited - v- Josephine Kagwiria Guantai*).
 - c. That costs of the application be provided for.
2. The application is based on a supporting and further affidavit of Natasha Gichuki, the Respodnent/Applicant’s Legal Counsel, sworn on 8th August 2023 and 1st February 2024 respectively. It is deponed in the said affidavits: -
 - a. that dissatisfied with this Court’s judgment delivered on 24th November 2022, the Respondent exercised its right of appeal by filing an appeal being Mombasa Court of Appeal Civil Appeal No. E061 of 2023 (*Great Lakes Ports Limited - v- Josephine Kagwiria Guantai*), which is arguable and has prospects of success.



- b. that the Claimant is a former employee of the Respondent/Applicant, and that the Respondent/Applicant has no knowledge of the Claimant's means and assets, or her ability to refund any sums that may be paid to her in the event that the appeal is successful.
 - c. that the Respondent/Applicant is reasonably apprehensive that unless an order of stay of execution pending hearing and determination of the appeal issues, the Claimant will commence execution for the judgment, thereby rendering the appeal nugatory.
 - d. that the Respondent/Applicant will suffer substantial loss of kshs. 1,473,103 if the appeal succeeds after payment of the decretal sum.
 - e. that the Respondent/Applicant is ready and willing to abide by any order that the Court may issue as a condition for grant of stay, including depositing the decretal sum or part thereof; as may be directed by the Court.
3. Documents annexed to the said affidavits include a copy of a memorandum of appeal, a proclamation of movable properties dated 30/1/2024 and copies of evenly dated warrant of attachment and warrant of sale of property in execution of a decree for money.
 4. The application was placed before me on 2/2/2024. Although I declined to certify the application as urgent in view of the fact that the same had been filed six (6) months earlier, I granted interim stay of execution of this Court's decree on condition that the Respondent/Applicant deposited the entire decretal sum in his Court within 14 days of the said date. On 19th February 2024, Counsel representing both parties herein confirmed to the Court that the decretal sum had been deposited in this Court as ordered.
 5. The application is opposed by the Claimant vide a replying affidavit and a further affidavit sworn on 22nd August 2023 and 1st March 2024 respectively. The Claimant deponed, inter-alia, that she is able to refund a sum of kshs. 939,792 should the Respondent/Applicant's appeal succeed, and annexed copies of title deeds and bank statements to the said supporting affidavit to firm up that deposition.
 6. As stated by the Court of Appeal in *Kenya Shell Limited - v- Benjamin Karuga Kibiru & Another* [1986] eKLR,

“...In considering an application for stay, the Court doing so must address its collective mind to the question of whether to refuse it would, render the appeal nugatory. This is shown by the following passage from the judgment of Cotton L J in *Wilson - v- Church* (No. 2) (1870) 12 ch D 544 at P. 458, where he said:-

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this Court ought to see that the appeal, if successful, is not nugatory.”
 7. If it is shown that execution of a Court's decree would render a valid appeal or proposed appeal nugatory, a stay may properly be given. Parallel to this is the equally important right of a successful litigant to realize the fruits of his or her judgment. Execution of a Court's decree is a lawful process aimed at realizing this right. That is why the law on execution of Court decrees is tailored in a way that balances the right of an appealing party and the right of a successful litigant. It is in the Court's discretion to grant or to refuse stay; and whether or not a stay will be granted or refused will depend on the circumstances of each case.



8. Section 13 of the *Employment and Labour Relations Court Act* provides as follows:-
- “A judgment, award, order or decree of the Court shall be enforceable in accordance with the rules made under the *Civil Procedure Act*.”
9. The civil procedure Rules are the Rules referred to in the foregoing statutory provision. Order 42 Rule 6(1) & (2) of the *Civil Procedure Rules* Provide follows:-
- “(1) No appeal or second appeal shall operate as a stay of execution of proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the Court from whose decision the appeal if preferred may apply to the appellate Court to have such order set aside.
- (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.”
10. Provision of security for due performance of a decree as provided in sub-rule 2(b) above caters for the successful litigant’s right/interest by ensuring that should the appeal against the decree passed in his favor fail and/or fall by the way side, he or she will pick up the secured fruits of his/her judgment with ease, and will not in any way be prejudiced.
11. The decree herein is a money decree, and the entire decretal sum has been deposited in this Court as security for due performance of the decree by the Respondent/Applicant, and none of the parties herein stands to suffer any loss, substantial or otherwise.
12. That said, and having considered written submissions filed for and against the application, I allow the Notice of Motion dated 9th August 2023 in the following terms:-
- a. There will be a stay of execution of this Court’s judgment delivered on 24th November 2022 and the resultant decree pending hearing and determination of Mombasa Court of Appeal Civil Appeal No. E061 of 2023 (*Great Lakes Ports Limited - v- Josephine Kagwiria Guantai*).
- b. The decretal sum herein amounting to kshs. 1,473,103 already deposited in this Court by the Respondent/Applicant on 13/2/2024 shall remain so deposited pending hearing and determination of Mombasa Court of Appeal Civil Appeal No. E061 of 2023 (*Great Lakes Ports Limited - v- Josephine Kagwiria Guantai*).
- c. Costs of the application shall be in the appeal.
13. Orders accordingly.



DATED, SIGNED AND DELIVERED AT MOMBASA THIS 18TH July 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:

.....Claimant

.....Respondent

