



**Saka v ABSA Bank Kenya PLC (Cause E383 of 2022)
[2024] KEELRC 2100 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2100 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E383 OF 2022
NZIOKI WA MAKAU, J
JULY 26, 2024**

BETWEEN

GABRIEL LINYERERA SAKA CLAIMANT

AND

ABSA BANK KENYA PLC RESPONDENT

RULING

1. The Respondent seeks through its notice of motion dated 24th April 2024 for stay of execution pending appeal. It was opposed by the Claimant who filed an affidavit. The application was disposed of by way of written submission. As at the time of penning the Ruling, only the Respondent’s submissions were on file.
2. The Respondent submitted that unless the Court intervenes and stays the intended appeal, the appeal it has filed before the Court of Appeal shall be rendered nugatory and otiose thus occasioning the Respondent/Applicant great prejudice. It submits that the purpose of stay was enunciated in the case of *RWW v EKW* [2019] eKLR where the Court of Appeal held that the purpose of an application for stay of execution of appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. The Respondent submits that the application was made without undue delay, that it will suffer substantial loss if no stay is granted and that it has offered security. It cited the case of *EDK v Kenyatta University* [2012] eKLR where the Court agreed with the Court of Appeal decision in *Halai & another v Thornton & Turpin Ltd* [1983] KLR 365 on the proposition that the discretion of the Court to order stay of execution of its order or decree is fettered by three conditions, namely, sufficient cause, substantial loss would ensue from a refusal to grant stay and that the applicant must furnish security and the application made without unreasonable delay.
3. The Respondent submitted that should the Claimant be allowed to execute, he may be unable to refund the decretal sum should the Court of Appeal overturn the decision of this Court. It was



submitted that it was willing to furnish security being a bank guarantee. It cited the cases of *Kan Travellers Company Limited & another v Ndalul & Savola Suing as legal representative of the Estate of the Late Zacharia Wasike & another* (Civil Appeal 149 of 2022) [2023] KEHC 2846 (KLR) where the High Court stated that the issue of security is discretionary, and it is upon the court to determine it. The Respondent cited the Court of Appeal decision in *Ndubiu Gitabi v Warugongo* [1988] KLR 621 where the Court of Appeal expressed itself as follows:

“The process of giving security is one, which arises constantly. So long as the opposite party can be adequately protected, it is right and proper that security should be given in a way, which is least disadvantageous to the party giving the security. It may take many forms. Bank guarantee and payment into court are but two of them. So long as it is adequate, then the form of it is a matter, which is immaterial”

4. The Respondent thus urged the grant of stay on the terms proposed by it.
5. This application for stay is merited. An appeal was lodged by filing of a notice of appeal on 18th April 2024. The application made was filed on 24th April 2024. The application by the Respondent was made within a very short time so there was no delay at all. The Respondent has offered security by way of a bank guarantee. The Claimant may be unable to refund the sums awarded were the Respondent successful in the Court of Appeal. As such, I order that there be a stay of execution on condition that the Respondent deposits the entire decretal sum in a joint interest earning account in the joint names of the advocates for the parties herein. The cost of this application will abide the outcome in the Court of Appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2024

NZIOKI WA MAKAU

JUDGE

