



SGS Security Guards Services Limited v Chepkemoi (Environment and Land Appeal E119 of 2024) [2024] KEELRC 2473 (KLR) (15 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2473 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E119 OF 2024**

**JW KELI, J
OCTOBER 15, 2024**

BETWEEN
SGS SECURITY GUARDS SERVICES LIMITED APPELLANT
AND
GLADYS CHEPKEMOI RESPONDENT

RULING

1. The Application dated 17th April, 2024 came up for hearing interpartes on the 15th October, 2024. The application was unopposed. The Respondent was absent.
2. The substantive order sought in the Application was that “pending the hearing and determination of the appeal, this Honourable court be pleased to stay the execution of the judgment delivered on 27th March, 2024 as well as the decree and certificate of costs issued on 11th April 2024”.
3. The Application being unopposed the only obligation for the court was to ensure compliance by the Applicant with the provisions of Order 42 and Rule 6 (2) of the *Civil Procedure Rules* which provides;
 - “(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.”



4. The Application was supported by the Affidavit of Earnesto M. Kingondu sworn on 17th April 2024 where he annexed as supporting evidence copy of judgment in favour of the Respondent for KShs.97,200 and EK2 copy of decree indicating costs awarded of KShs.44,500/-.
5. According to the Applicant the award was for housing allowance which he says was paid at monthly rate of KShs. 2,163 (EK3 being payroll produced before trial court). The Applicant stated that they were contesting the finding (EK4 was a copy of the memorandum of appeal).
6. The Applicant stated that there was a threat of execution (EK5 being letter by Respondent). The Applicant states that the Respondent being unemployed may not be able to refund the total decretal amount of KShs.142,305.62 if paid and appeal the succeeds. That it will consequently suffer substantial loss if the execution is not stayed.
7. The Appellant states that it was willing to deposit monies (half decretal amount in joint interest earning account) or amount as the court may direct.
8. The court applying Order 42 Rule 6(2) finds that the Respondent having failed to respond on the issue of her ability to refund the decretal amount in event the appeal was successful by simply filing affidavit of means, the Applicant has succeeded in demonstrating potential substantial loss if the decretal amount was paid to the judgment debtor.
9. Further it is in interest of justice to preserve the substance of the appeal in the event of a successful appeal. At the same time, the court must balance with the protection of the right of the decree holder by securing the decretal amount.
10. The application being unopposed the court grants the wish of the Applicant to deposit half of the decretal amount of KShs.142,305.62 in joint earning amount between the Advocates of the Claimant and the defendant within 30 days of this order. The decretal amount being unsettled since judgment, I make order of costs in the cause.
11. It is so ordered.

DATED, DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF OCTOBER, 2024.

JEMIMAH KELI

JUDGE

In The Presence Of

Caleb – court assistant

Omollo holding brief Odhiambo for Applicant

Respondent- absent

