



Embu Water & Sanitation Company Limited v Njuguna (Civil Application E044 of 2024) [2024] KECA 1309 (KLR) (27 September 2024) (Ruling)

Neutral citation: [2024] KECA 1309 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E044 OF 2024
W KARANJA, J MOHAMMED & LK KIMARU, JJA
SEPTEMBER 27, 2024**

BETWEEN

EMBU WATER & SANITATION COMPANY LIMITED APPLICANT

AND

DANIEL MUTUKU NJUGUNA RESPONDENT

(Being an application for stay of execution pending the determination of an appeal from the judgment and decree of the Employment and Labour Relations Court at Nyeri (O. Makau, J.) dated 18th April 2024 in ELRC No. E044 of 2023)

RULING

1. Daniel Mutuku Njuguna (the respondent) was an employee of the Embu Water and Sanitation Co. Ltd (the applicant). His employment was nonetheless terminated through a process which he challenged as unfair and unprocedural before the Employment and Labour Relations Court (ELRC). Judgment was given in his favour on 18th April 2024 in which the applicant was ordered to, inter alia, pay the respondent terminal benefits to the tune of Kshs.1,682,970.00 with interest from the date of judgment.
2. The respondent filed a Notice of Appeal before this Court on 30th April 2024. Thereafter, he filed a Notice of Motion dated 16th May 2024 under certificate of urgency in which they entreat the Court to stay execution of the said judgment.
3. In the grounds on the face of the motion and the depositions in the affidavit in support of the motion sworn by Nancy Mwakire on 16th May 2024, the applicant avers that it has an arguable appeal. It also contends that if the respondent executes for the said amount, and the appeal eventually succeeds, it will be difficult to recover that money and the applicant will be exposed to great hardship and prejudice, and the appeal will be rendered nugatory. The applicant also depones that it is willing and ready to abide by any conditions the Court might impose.



4. The main arguable ground cited is that the trial court had found the termination procedurally fair but still went ahead to award the respondent the terminal benefits.
5. We have considered the application along with the depositions in the affidavit. We note that the respondent did not file any replying affidavit despite service of the application and also of the hearing notice. No submissions were filed either.
6. The application is, therefore, unopposed. That notwithstanding, the law enjoins us to consider the merits of the application and confirm if it meets the threshold for applications predicated on Rule 5(2) (b) of the Court of Appeal Rules.
7. In order for such an application to succeed, the applicant needs to demonstrate the needs to demonstrate the twin principles of arguability and the nugatory aspect. These requirements were elucidated in *Trust Bank Ltd & Another -vs- Investech Bank Ltd & 3 others* [2000] eKLR, where the Court held:

“The jurisdiction of the Court under Rule 5(2)(b) aforesaid is original and discretionary and it is trite law that to succeed applicant has to show firstly that his appeal or intended appeal is arguable or put another way, it is not frivolous and secondly that unless he is granted a stay, the appeal or intended appeal, if successful will be rendered nugatory”

8. Be that as it may, for the application to succeed the applicant must demonstrate that it has an appeal which is not frivolous and which deserves to be canvassed fully before the Court. As reiterated by this Court many times, an applicant needs only to demonstrate that he/she has one arguable ground of appeal and not a litany of grounds. We also remind ourselves that an arguable appeal need not be one that will succeed. See *Stanley Kangethe -vs- Tony Keter and 5 others* [2015]eKLR.
9. Does the applicant have an arguable appeal? Given that the applicant only needs to demonstrate one arguable point to satisfy the first requirement, we find that the question whether the respondent was entitled to terminal benefits even after the court found his termination procedurally fair is arguable.
10. On the 2nd limb, in the absence of a deposition from the respondent that he is not a man of straw and he is in a position to refund the money in the event the appeal eventually succeeds, we are persuaded that if the amount in question is paid to the respondent, in the event the appeal succeeds, it will be difficult for the applicant to recover the same.
11. Accordingly, we find that the application meets the required threshold. We allow it and grant stay of execution of the judgment as prayed pending the hearing and determination of the appeal. We order that costs of the application be in the appeal.

DATED AND DELIVERED AND AT NAKURU THIS 27TH DAY OF SEPTEMBER 2024.

W. KARANJA

.....

JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

L. KIMARU



.....

JUDGE OF APPEAL

I certify that this is a true copy of the Original.

Signed

DEPUTY REGISTRAR.

