



**Standard Chartered Bank Limited v Moloi (Civil Application
E095 of 2024) [2024] KECA 1800 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1800 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E095 OF 2024
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
DECEMBER 18, 2024**

BETWEEN

STANDARD CHARTERED BANK LIMITED APPLICANT

AND

STEPHEN TAJEU MOLOI RESPONDENT

*(Being an application for stay of execution pending appeal from the judgment
of Employment and Labour Relations Court of Kenya at Nakuru (H.
Wasilwa, J.) dated 26th September, 2024 in ELRC Cause No. E005 of 2023)*

RULING

1. Before us is an application dated 4th October, 2024 brought by Standard Chartered Bank Limited, (the applicant) under Sections 3A and 3B of the [Appellate Jurisdiction Act](#), and Rule 5 (2) (b) of the [Court of Appeal Rules, 2022](#). In the main, the applicant prays for stay of execution of the judgment delivered on 26th September, 2024 (Wasilwa J.) in Nakuru Employment and Labour Relations Court Cause No. E005 of 2023 pending hearing and determination of its intended appeal.
2. The motion is supported by the grounds on its body and the supporting affidavit sworn on 4th October, 2024 by Lorraine Adoli Oyombe, the applicant's Employment Relations Manager together with annexures thereto. It has been opposed by the respondent vide his replying affidavit sworn on 16th October 2024.
3. The application was canvassed through rival pleadings, oral and written submissions and legal authorities relied upon by advocates for the respective parties in support of their opposing positions. The applicants' submissions are dated 30th October, 2024 while the respondent's submissions are dated 4th November 2024. Ms. Bonyo learned counsel appeared for the applicant whereas Mr. Biko learned counsel appeared for the respondent.



4. It is common ground that the respondent was employed by the applicant on 12th September, 2018 as a Teller until October 2020 when he was designated as the applicant's universal banker. Various allegations were made against the respondent culminating with an e-mail from the applicant's Human Resource Management on 22nd August 2022. The said e-mail claimed that the applicant had resigned when he actually had not. It is also stated that resignations in the applicant's bank are only made through the applicant's online portal and the same is submitted for approval by the management.
5. Aggrieved by the alleged falsified letter of resignation, vide Memorandum of claim dated 18th January, 2023 the respondent moved the employment court seeking, inter alia, a declaration that the applicant's purported termination of his employment was unprocedural, malicious, unfair and unlawful. He prayed for unconditional reinstatement without loss of benefits and privileges.
6. The applicant maintained that the respondent voluntarily resigned from his employment on 20th August, 2022 when he reported late at 9:12 am and upon being asked about the delay, he had an argument with the Branch's Operations Manager one Stephen Otieno Okech and upon being summoned to the Branch Managers Office for questioning on his late arrival, instead of giving an explanation, he proceeded to issue a hand written resignation letter to the Branch Operations Service Manager giving one month notice.
7. By a judgment dated 26th September 2024, Wasilwa, J. found that the applicant failed to prove that there was authentic evidence that the respondent resigned from his employment as a consequence the learned Judge held that the respondent was entitled to continue serving as an employee of the applicant in the same capacity or in a re-engaged capacity without loss of benefits and salary with effect the date of the alleged resignation and to keep serving as such unless otherwise terminated for any other just cause.
8. The applicant is before this Court pursuant to Rule 5 (2) (b) of the [Court of Appeal Rules, 2022](#) seeking stay of execution of the said decision pending hearing and determination of his appeal to this Court. The grounds in support of the argument that it has an arguable appeal are inter-alia that the learned Judge erred in fact and in law in failing to enumerate any exceptional circumstances in this matter which justify the order of re-engagement; that the learned Judge failed to appreciate the nature of the applicant's business, the importance of trust and confidence between a bank and its employees; that the learned Judge failed to appreciate that prior to his resignation, the respondent held a fiduciary role in the bank which entails handling clients' money and vault operations and the implications of reinstating him back to his exact role.
9. On the nugatory aspect, the applicant averred, inter-alia, that the respondent's post has since been filled as the respondent never obtained an injunction barring the filling of that position and the current office bearer is at risk of a losing his job considering that there are currently no vacancies for universal bankers in the company; that the court order amounts to specific performance of a contract for service within a sensitive financial operating environment and it has the potential to destabilize the working environment and extremely strain work place relations; and that the respondent may not be able to repay any sums paid to him should this Court find the intended appeal has merit.
10. In opposition, the respondent averred that the instant application is a belated afterthought because the respondent was reinstated on 2nd October, 2024 as per the impugned judgment and furthermore, the respondent has proceeded on annual leave on the applicant's bank instructions. Consequently, the instant application has been overtaken by events.
11. Regarding the nugatory aspect, the respondent averred that the applicant will suffer no harm being a mega profit earning institution compared to the respondent who has suffered and continues to suffer



- irreparable harm in loss of income, medical insurance, and education insurance policy for his child, crippling loans granted by the applicant and the risk of distress.
12. Regarding the apprehension that the respondent may not be able to pay the decretal sum, the respondent averred that the said issue can only be decided upon determination of the appeal and even then, must be based on relevant execution proceedings. The respondent also deponed that he is agreeable to the stay if the same was conditional on the terms that: the entire decretal sum plus accrued interest be deposited as security in a joint interest earning account and 50% of the decretal sum be released to him.
 13. Learned counsel for the applicant Ms. Bonyo in her submissions essentially reiterated the contents of the applicant's affidavit in support of the application. We find there is no need to regurgitate the same.
 14. Learned counsel for the respondent Mr. Biko essentially highlighted the contents of the respondent's replying affidavit in opposition to the application and submitted that the application is a futile academic exercise attempting to spur the court to commit an illegality by failing to disclose that the respondent already returned to work and has since been sent on indefinite leave in a bid to exhaust accumulated leave days. Mr. Biko also submitted that harm and extreme prejudice will be meted upon the respondents, should stay of a non-existent appeal be granted since the respondent has already been reinstated.
 15. We have considered the application, the affidavits in support of and in opposition thereto, as well as the rival submissions and urged by the parties. Our invitation to intervene on behalf of the applicant has been invoked under Rule 5 (2) (b) of the *Court of Appeal Rules* which provides that this Court may in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the court may think just. Importantly, the principles which guide the Court in considering applications made under that the said rule are now well settled. This Court in *Reliance Bank Ltd (In Liquidation) vs. Norlake Investments Ltd* – Civil Appl. No. Nai. 93/02 (UR) stated that for an application under Rule 5 (2) (b) to succeed, the applicant must satisfy the court on two matters, namely; (a) that the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal, and, (b) that if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.
 16. On the first aspect as to whether the application is arguable and not frivolous, one of the applicant's complaints is that the learned Judge erred in fact and in law in failing to enumerate any exceptional circumstances in this matter which justify the order of re-engagement as issued. The other was that, the Honourable judge court ordered the re-engagement of the Claimant in violation of the applicant's constitutional right under Article 36 of the *Constitution* not to be subjected to servitude. The counter argument urged by the respondent is that the alleged respondent's resignation letter was forged. Without going into the merits of the intended appeal as this will be the preserve of the bench hearing the main appeal, we are satisfied that the grounds urged by the applicant (and even the ground urged by the respondent) are arguable grounds which ought to be resolved by the Court hearing the appeal. Accordingly, the applicant has satisfied the first pre-requisite and inadvertently, the respondent has reinforced the applicant's applicant by citing arguable grounds to be resolved in the appeal instead of demonstrating that the appeal is not arguable which is what a respondent in an application of this nature is required to do.
 17. Turning to the second prerequisite, it is noteworthy that the respondent asserted that he has already been reinstated but sent on leave. The applicant's position is that the respondent occupies a fiduciary position and only reinstated the respondent to comply with the court order. In these circumstances,



we do not agree that the application before us has been overtaken by events, rendering the issue of stay beyond the reach of the law. This is because central to the appeal is the simple question whether or not the reinstatement was proper. Therefore, any order allowing the reinstatement to subsist will certainly render the appeal nugatory. Conversely, should the appeal fail, then the respondent can be reinstated with full benefits or can be compensated by way of damages. In any event, it was not demonstrated to us that the applicant cannot reinstate the respondent or pay him his full benefits should the appeal fail. Accordingly, we find that the applicant has satisfied the nugatory aspect as well.

18. The upshot of the above is that, we find that the application dated 4th October, 2024 is merited. We allow it and order that there shall be stay of execution of the judgment delivered on 26th September, 2024 (Wasilwa, J.) in Nakuru Employment and Labour Relations Court Cause No. E005 of 2023 pending the hearing and determination of the applicant's intended appeal. Each party shall bear its costs for this application.

DATED AND DELIVERED AT NAKURU THIS 18TH DAY OF DECEMBER, 2024.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA CIArb, FCIArb.

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

