



**Akili Africa Limited v Macharia (Civil Application 4 of 2018)  
[2022] KECA 46 (KLR) (4 February 2022) (Ruling)**

Neutral citation: [2022] KECA 46 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION 4 OF 2018  
MSA MAKHANDIA, DK MUSINGA & PO KIAGE, JJA  
FEBRUARY 4, 2022**

**BETWEEN**

**AKILI AFRICA LIMITED ..... APPLICANT**

**AND**

**CHARLES MIANO MACHARIA ..... RESPONDENT**

*(An application for stay of execution pending the appeal from the Judgment of the Employment and Labour Relations Court of Kenya at Nairobi (Mbaru, J.) dated 07th December, 2017 in ELRC Cause No. 2270 of 2014)*

**RULING**

1. By a motion dated 11th January 2018 and brought under Rule 5(2)(b) of the [Court of Appeal Rules](#), the appellant, Akili Africa Limited, seeks orders as against Charles Miano Macharia, the respondent, that;
  1. This Honourable Court be pleased to grant a Stay of Execution of the Judgment/decision of the Employment & Labour Relations Court delivered on 7th December 2017 pending the hearing and determination of this Application. (Our emphasis)
  2. This Honourable court be pleased to Set Aside the Judgment/decision of the Employment & Labour Relations Court delivered on 7th December 2017 and all consequential orders thereto; until the Appeal is Heard and determined on its merits.
2. The notice of motion is founded on 5 grounds appearing on the face of it and is supported by an affidavit sworn by Paul C. Jackson, the appellant's Chief Executive Officer. It was explained that the respondent filed a claim seeking payment of unpaid gratuity amounting to KShs. 900,000 for the 5 years he had worked for the appellant. After considering the arguments of both parties, the learned Judge



held that the respondent was entitled to the payment as set out in his contract and entered judgment against the appellant for the sum pleaded.

3. Aggrieved, the applicant filed a notice of appeal which gives us jurisdiction to hear and determine applications under the rule invoked.
4. The appellant avows that; it has raised weighty issues of law and fact that ought to be heard by this Court; the learned Judge failed to appreciate the meaning and intention of the gratuity clause; if the stay is not granted the appeal would be rendered nugatory and the appellant stands to suffer irreparable loss and damage.
5. Prior to proceeding to the merits of this application, we observe that prayer number 2 herein is untenable as this Court has no power to set aside a judgment of the High Court at interlocutory stage. The only power available is that of Stay as envisioned by Rule 5(2)(b) of this Court. Further, prayer number 1 which properly concerns itself with stay of execution seeks it pending the hearing and determination of this application. We cannot indulge such a prayer since as soon as we deliver this ruling, the order will vacate. We cannot issue an order in vain. See, [Tanzania Roads Agency vs Kundan Singh Construction Ltd & Another \[2013\] eKLR.](#)
6. For these reasons, we find that this application to be misconceived and incompetent. It is accordingly struck out with costs.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2021.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**D. MUSINGA**

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**JUDGE OF APPEAL**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

