



REPUBLIC OF KENYA



**KENYA LAW**  
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**Alliance One Tobacco Kenya Limited v Kenya Union of Commercial, Food and Allied Workers & 5 others (Civil Appeal (Application) 50 of 2016) [2022] KECA 700 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 700 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 50 OF 2016  
DK MUSINGA, J MOHAMMED & S OLE KANTAI, JJA  
JULY 22, 2022**

**BETWEEN**

**ALLIANCE ONE TOBACCO KENYA LIMITED ..... APPELLANT**

**AND**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... 1<sup>ST</sup> RESPONDENT  
JAMES GICHUNGE ..... 2<sup>ND</sup> RESPONDENT  
JOHN KIMATA ..... 3<sup>RD</sup> RESPONDENT  
ELIUD PAPOI ..... 4<sup>TH</sup> RESPONDENT  
ANNE MUGO ..... 5<sup>TH</sup> RESPONDENT  
SAMSON TEMBE ..... 6<sup>TH</sup> RESPONDENT**

*(Being an appeal against the Judgment of the Employment and Labour Relations Court of Kenya at Nyeri (Ongaya, J.) dated 25th November, 2015 in Cause No. 163 of 2015 Consolidated with Cause No. 164 of 2015)*

**RULING**

1. The history of the Motion before us can be traced back to the Judgment of Ongaya, J. delivered on 25<sup>th</sup> November, 2015 in Nyeri Employment and Labour Relations Court Cause No. 163 of 2015 between Kenya Union of Commercial, Food And Allied Worker & Others (as Claimant) and Alliance One Tobacco (Kenya) Limited (the respondent there but applicant before us). The claimants (respondents here) were successful in their claim and judgment was given in their favour. The applicant (Alliance One Tobacco (Kenya) Limited) filed a Notice of Appeal against part of that judgment.



- 2 The applicant filed an application in this Court for stay of execution pending appeal and the record shows that in a ruling delivered on 31<sup>st</sup> May, 2016 this Court granted orders of stay of execution pending appeal conditional upon the applicant paying a sum of Ksh.10,000,000 into an interest earning account in the joint names of the Advocates on record for the parties or in the alternative, obtaining and filing a bank guarantee for the said sum to the Court of Appeal, Nyeri. Such a guarantee was duly obtained by the applicant and the original document was filed with the Deputy Registrar, Court of Appeal, Nyeri, on 28<sup>th</sup> June, 2016 issued by CFC Stanbic Bank.
- 3 By a judgment delivered on 11<sup>th</sup> July, 2019 this Court allowed the appeal by the applicant (Nyeri C.A. No. 50 of 2016).
- 4 By Motion on Notice brought pursuant to directions of the Registrar on 21<sup>st</sup> December, 2021, under Rule 42 of the *Court of Appeal Rules*, 2010 and all other enabling provisions of law, the applicant prays in the main that we issue an order to our Deputy Registrar, Nyeri, directing release of the original and triplicate copies of the guarantee issued by CFC Stanbic Bank on 28<sup>th</sup> June, 2016 to the applicant. The applicant has set out grounds in support of the Motion which are repeated in the supporting affidavit of Sammy Muriithi Ikingi, the applicant's Company Secretary, which in essence repeat the history of the matter which we have set out in this Ruling. Attached as annexures to the affidavit is the Order of this Court given on 31<sup>st</sup> May, 2016 granting conditional stay of execution pending appeal; the bank guarantee issued by CFC Stanbic Bank dated 28<sup>th</sup> June, 2016 and correspondence between the parties.
- 5 As we have seen, this Court gave conditional stay of execution pending appeal. The appellant in compliance with the said order obtained a bank guarantee from its bank which was filed in Court. The appeal was thereafter heard and allowed and this event meant that the substratum of the matter was lost, it was no longer necessary to have or to maintain the bank guarantee.
- 6 The applicant says that it requires our Order to enable the Registrar of this Court to release the guarantee. There is no reason advanced why the applicant should not have that Order, indeed at the hearing of the Motion which came up before us on 4<sup>th</sup> July, 2022 learned counsel Mr. Njeru, for the 2<sup>nd</sup> to 6<sup>th</sup> respondents, indicated to us that he had already executed necessary documents to the said bank for release of the guarantee.
- 7 We allow the Motion dated 27<sup>th</sup> January, 2022. We direct the Registrar to release to the applicant the original guarantee issued in this matter by CFC Stanbic Bank and any copies that may be in the file. As the matter is uncontested, each party to bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY, 2022.**

**D.K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**



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

*Signed*

**DEPUTY REGISTRAR**

