



**Hume v Gathuku (Employment and Labour Relations Appeal  
E208 of 2023) [2025] KEELRC 135 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 135 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E208 OF 2023**

**NJ ABUODHA, J  
JANUARY 24, 2025**

**BETWEEN**

**AGATHE MARIE HUME ..... APPELLANT**

**AND**

**AGNES KIRIGO GATHUKU ..... RESPONDENT**

**RULING**

1. The Appellant filed application dated 16<sup>th</sup> October, 2023 which is brought under Order 42 Rule 6 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*.
2. The Appellant is seeking for orders that pending the hearing and determination of this Appeal there be an order of stay of execution of the Judgment of the lower Court dated 18<sup>th</sup> September,2023 delivered by Hon. Lucy NJORA, CM with costs being in the course.
3. The application was supported by the grounds set out in the face of the Application herein and the Affidavit of AGATHE MARIE HUME the Appellant herein who averred that on 18<sup>th</sup> September,2023 the Chief Magistrate Milimani Commercial Courts delivered a judgment against her. That she was aggrieved with the judgment and she has lodged an appeal in this court by filing a Memorandum of Appeal dated 16<sup>th</sup> October,2023.
4. The Appellant averred that the Appeal raises fundamental issues with a high chance of success. That the execution was imminent after the Respondent applied for a decree vide the letter dated 9<sup>th</sup> October,2023. That the Respondent would start execution any time if stay orders were not issued pending hearing and determination of this appeal rendering the Appeal nugatory.
5. The Appellant averred that he has no knowledge of the means and assets of the Respondent and her ability to repay any sums that may be paid out pursuant to the Judgment in the instance that this appeal is allowed. That the Appellant would therefore suffer loss if stay is not granted.



6. In reply the Respondent filed her undated Replying Affidavit and opposed the Appellant's Application. The Respondent averred that the Application was made with unreasonable delay having been more than 30 days after delivery of judgment in the trial court. That the orders are made to frustrate a successful litigant and to deny her fruits of a lawful judgment.
7. The Respondent averred that the Appellant failed to show substantial loss which will be suffered in the event the orders sought herein are not granted. That the application was misplaced, hollow and lacking any basis at all and therefore unmerited and for dismissal with costs.
8. The Application was disposed of by written submissions.

### **Determination**

9. On the issue of stay orders the grounds upon which this Court exercises the discretion to grant a stay of execution are well governed by the Civil Procedure Rules under Order 42 Rule 6 which stipulates as follows: -
  - (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.
10. In *Joseph Odide Walome v David Mbadi Akello* [2022] eKLR the court in support of the above provision held as follows;

An applicant needs to satisfy the court on the following conditions before they can be granted the stay orders:

  - a. Substantial loss may result to the applicant unless the order is made,
  - b. The application has been made without unreasonable delay, and
  - c. Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
11. On the issue of substantial loss, this was ably explained by Gikonyo J in the case of *James Wangalwa & Anor v Agnes Naliaka Cheseto* [2012] eKLR where the learned Judge observed:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process...The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail.
12. As observed in the cases cited above, the Appellant has not illustrated how she will suffer substantial loss in this application but that notwithstanding this application was filed together with the Memorandum of Appeal which means it would be prejudicial to the Appellant if she succeeds on the Appeal yet the Respondent has already executed the decree in the lower court. The Appellant also alleged that she does not know the Respondent's means and assets and her ability to repay any sums that may be paid



out in the instant of the judgment. It would be in the interest of justice to stay the execution of the judgment at the lower court until the issues the Appellant has raised in her appeal are ventilated. This will avoid rendering the appeal nugatory.

13. On the second limb of approaching the court without unreasonable delay, this court notes that Judgment was delivered on 18<sup>th</sup> September, 2013 and this application is dated 16<sup>th</sup> October, 2023 which is less than a month. This court finds this period to be reasonable in all circumstances.
14. On the issue of security for costs the Appellant has not submitted on the same and since it is one of the requirements the Appellant should abide by the same.
15. The Applicant has therefore met the conditions for grant of the orders of stay.
16. The application is therefore found with merit and is hereby allowed in the following terms: -
  - i. The Appellant is ordered to deposit the decretal sum of Kshs. 505,000/= in Court within 30 days of this ruling as condition for stay of execution pending the hearing and the determination of the appeal
  - ii. Mention on 24<sup>th</sup> February, 2025 to confirm compliance and issue directions on hearing and disposal of the appeal.
  - iii. Costs shall be in the cause.
17. It is so ordered.

**DATED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY, 2025**

**DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF JANUARY, 2025**

**Abuodha Nelson Jorum**

**Presiding Judge-Appeals Division**

