



**KCB Bank Kenya Limited v Bogita (Appeal E286 of 2024)
[2025] KEELRC 102 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 102 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E286 OF 2024
JW KELI, J
JANUARY 22, 2025**

BETWEEN

KCB BANK KENYA LIMITED APPELLANT

AND

DOUGLAS NYAMWAMU BOGITA RESPONDENT

RULING

1. The Applicant was the respondent in the suit before the Magistrates court and the former employer of the respondent herein. The Trial Magistrate Court entered judgment in favour of the respondent against the Applicant for the total sum of Kshs. 1,514,170/- delivered on the 20th September 2024. The applicant being dissatisfied with the judgment filed a Memorandum of Appeal dated 1st October 2024 received in court on the 15th October 2024.
2. The Applicant further filed application by way of Notice Motion dated 3rd October 2024 and received in court on the 7th October 2024 brought under certificate of urgency Order 42 Rule 6 of the [Civil Procedure Rules](#) and all enabling provisions of the law seeking the following substantive reliefs:-
 - a. There be a stay of execution of the judgment of the Hon. Wendy Micheni (Chief Magistrate) (as she then was) dated 20th September 2024 pending the hearing and determination of this appeal.
 - b. The costs of this application be provided for.
3. The application was grounded on the premises that a judgment for Kshs. 1,514,170 had been entered against the applicant who was aggrieved by the entire judgment and had lodged an appeal. The applicant contended that it was in the interest of justice to grant a stay of execution stating the judgment was based on legal and factual errors. The applicant stated that it would suffer substantial loss if a stay was not granted, that it was willing to provide security as may be ordered by the court, and that the application was brought without delay.



4. The application was further supported by the affidavit of Velma Okoth who annexed the pleadings before the trial court being, the claim and witness statement of the claimant (VO-1) and their response(VO-2). She stated that the matter proceeded on full hearing and that the parties filed written submissions. She annexed the impugned judgment of 20th September 2024 as VO-3. Velma further annexed a copy of the filed Memorandum of Appeal and their request for trial proceedings(VO-4) and further confirmed they were ready to provide security as a condition of the stay of execution.
5. On the 7th October 2024 the court certified the application as urgent and granted a temporary order of stay of execution pending the hearing and determination of the application. The court directed the response to be filed within 14 days. There was no response despite physical service on the advocates on record at the lower court. The application was thus unopposed.

Decision

6. The appellant did file written submissions through its advocates Oraro & Company Advocates which were dated 21st November 2024. The issue for determination was whether the prayer for a stay of execution was merited.
7. The *Employment and Labour Relations Court (Procedure) Rules* 2024 on stay of execution pending appeal states: - “21. (1) Where an application for stay of execution pending appeal has been lodged, the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court.
 2. An application for stay of execution pending appeal shall be filed in the appeal file.” Since the Court Rules are silent on the conditions for granting stay then the lacuna is addressed by Order 42 Rule 6 (2) of the *Civil Procedure Rules*, as correctly relied on by the Applicant , to wit:- “(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.”
8. The applicant relied on several authorities which the court noted were consistent with the decision In *Butt vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal gave guidance on how a Court should exercise discretion in an application for a stay of execution as follows: -
 1. The power of the Court to grant or refusal an application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle is granting or reusing a stay is: If there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge’s discretion. (sic) (trial Court judgement).
 3. A judge should not refuse a stay if there is a good ground for granting it merely because in his opinion a better remedy may be available to the applicant at the end of the proceedings.
 4. The Court in exercising its powers under order XLI rule 4 (2) (b) of the civil procedure Rules can order security upon application by either party or on its own motion. Failure to put security of costs as ordered with cause the order for stay of execution to lapse”.



9. In the instant case, the application was brought without delay judgment having been entered on the 20th September 2024 and application filed on the 7th October 2024. The applicant lodged the appeal on the 15th October 2024 within the statutory period of 30 days of lodging appeal to the court under rule 12 of the *Employment and Labour Relations Court (Procedure) Rules* 2024 to wit:-“ 12(2) Where an appeal is from a magistrate’s court or where no period of appeal is specified in the written law referred to in sub-rule (1), the appeal shall be filed within thirty days from the date the decision is delivered.”
10. The court applying the Butt decision finds that the appeal would be rendered nugatory if the stay of execution is not granted and the appeal succeeds. The application was filed without delay. The applicant stated it was willing to provide security for the performance of the decree. The court is satisfied that the applicant has met the conditions under Order 42 Rule 6 of the *Civil Procedure Rules* for the grant of the Order of stay of execution. The court finds security of performance of the decree in terms of deposit of the decretal sum in an interest-earning account held by advocates of both parties as a fair condition for the grant of the stay of execution.
11. In the upshot the application dated 3rd October 2024 is allowed as follows:-
 - a. The court grants Order of stay of execution of the judgment of the Hon. Wendy Micheni (CM) (as she then was) dated 20th September 2024 pending the hearing and determination of this appeal on condition that the decretal amount is deposited in an interest earning joint account held in the name of the advocates for both parties within 30 days of this Order in default the Order lapses automatically.
 - b. Costs of the application to the Respondent.
12. Mention on 11th February 2025 for directions in the appeal.

It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF JANUARY, 2025.

**JEMIMAH KELI,
JUDGE.**

In The Presence Of:

Court Assistant:- Otieno

Applicant : - Ms. Manani

Respondent: Nyachoti

