



REPUBLIC OF KENYA



**Royal Fist Security Limited v Lumuli (Employment and Labour Relations
Appeal E101 of 2024) [2025] KEELRC 660 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 660 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E101 OF 2024**

JW KELI, J

FEBRUARY 28, 2025

BETWEEN

ROYAL FIST SECURITY LIMITED APPELLANT

AND

PHILIP ANYOVA LUMULI RESPONDENT

RULING

1. The Appellant/Applicant brought an Application by way of Notice of Motion dated 12th September, 2024 under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), 2010, Orders 50 Rule(6) and 51 of the Civil Procedure Rules 2010, and Section 95 of the [Civil Procedure Act](#) and all other enabling provisions of the law. The Applicant seeks the following orders;
 - i. Spent
 - ii. This Honourable Court be pleased to expand and/or extend the time within which the Appellant/Applicant herein is to comply with the Order requiring it to offer a security in the nature of a bank guarantee of Kshs. 200,000/= within 30 days by a further 6 months.
 - iii. Costs for this application be provided for.
2. The instant Application was based on the grounds on the face of the application and was further supported by the affidavit of Isaac Wafula Masoni sworn on 12th September, 2024 who averred that the Court ordered the Appellant to deposit a sum of Kshs. 200,000/= in a joint interest earning account held by the parties advocates within 30 days from the date of hearing of the Application on 13th June, 2024. That the parties agreed to vary the said Court Order and have the Appellant offer a security in the nature of a bank guarantee of Kshs. 200,000/= within 30 days.
3. The Appellant averred that it had been experiencing a significant and unforeseen financial downturn, making it difficult to meet the payments on time. Further, the Applicant averred that it has



true, genuine intention of complying with the order and has made efforts of negotiating payment instalments with the Respondent and have been unable to comply due to the unanticipated financial constraints. The Applicant therefore seeks an extension of time for a further 6 months to allow it more time to source the necessary funds to comply with the order.

Response

4. The application was opposed by the Respondent vide its Replying Affidavit sworn by the Respondent on the 11th of October, 2024. The Respondent denies being approached by the Appellant with any proposal to negotiate payment plans and averred that no such communication had been made by the Applicant. It is further averred that the instant application has been filed 4 months after this Honorable Court granted an Order of stay of execution pending appeal and there had been no excuse as to the delay in filing the instant application. The Respondent contended that filing this application was an afterthought having been prompted by the Respondent's attempt to execute the Decree as the Appellant herein had without just reason or cause failed to adhere to the orders of the court and Consent Order, to provide security in exchange for grant of the stay Orders.
5. The Respondent asserted that the Applicant herein had not discharged the conditions imposed under Order 22 Rule 22 namely: that it has not been demonstrated in the affidavit what or how substantial loss will result to the applicant, no sufficient cause for stay has been demonstrated; and no security has been provided for grant of stay orders. It is averred that further due to the actions of the Applicant, the Respondent has been rendered destitute and forced to relocate to the village and urges the court to dismiss the Application as it is a mode of delaying and denying the Respondent from enjoying the fruits of his judgment.

Further Response

6. The Applicant replied to the Respondent's Replying Affidavit through its Further Affidavit sworn by Isaac Wafula Masoni on 20th November 2024. He averred that the effect of this Honourable Court's Order delivered on 13/6/2024 was to balance two parallel propositions not to deprive the Respondent fruits of the judgment in the interim before determination of the Appeal and to protect the Applicant in the event that any execution of the lower trial court's Decree would render appeal nugatory.
7. Further, it is asserted that by virtue of this Honourable Court's Order delivered on 13/6/2024, the averment in paragraph 9 of the Respondent's Replying Affidavit were matters directly and substantially in issue in the former Application dated 22/3/2024 between the parties herein and as such are res judicata. It is contended that the Applicant approached this Honourable Court with pure intentions that will enable enforce the orders of this Honourable Court. The Applicant claimed that it is facing harsh economic realities and was seeking this Honourable Court to take cognizance of its willingness towards ensuring the Orders are enforced pending hearing and determination of the Appeal.

Determination

11. The application was canvassed by way of written submissions. Both parties complied.

Issues for determination

8. The Appellant/Applicant submitted the following issues for determination:
 - i. Should the time for compliance with orders delivered on 13/6/2024 be extended;
 - ii. Can the Respondent execute the trial court's decree;



- iii. Whether the issues raised by the Respondent are res judicata; and
 - iv. Whether the Applicant is culpable of delaying determination of this matter.
9. The Respondent on the other hand, submitted the following issues for determination:
- i. Whether the time within which to deposit security should be enlarged;
 - ii. Can the Respondent execute the trial court's decree
 - iii. Whether the issues raised by the Respondent is res judicata
 - iv. Whether the Applicant is culpable of delaying determination of this matter.
10. The court, upon perusal of the pleadings and written submissions of the parties was of the considered opinion that the issue for determination in the ruling was on the merit of the application.

Whether the application was merited.

11. The application dated 22nd March 2024 sought for stay of execution of the lower court judgment. During the hearing of the application on the 13th June 2024 the parties compromised the application and an Order was issued by Justice Ocharo for the Applicant to deposit as security of performance of a bank guarantee of Kshs. 200,000. That has not been complied with. The instant application dated 12th September 2024 sought for enlargement of time within which the Respondent was to comply with Court Order by consent of 13th June 2024.
12. The respondent opposed the application, stating it was filed 90 days after lapse of the Consent Order of stay and was only prompted by their seeking of Decree. The delay was not explained. The application is further meant to delay the determination of the appeal to their detriment.
13. The applicant submitted it was resjudicata to revisit the basis for the stay as that was determined under application of 22nd March 2024 when the stay was granted. The applicant stated it was due to financial stress that it had not complied.
14. The court agreed with the Applicant that the reasons for the grant of the Order of stay of execution were spent under the application of 22nd March 2024. The issue before the court was whether to enlarge time for compliance. The applicant had 30 days granted on 13th June 2024 to deposit the bank guarantee of Kshs. 200000 as security. The applicant did not explain the delay in bringing the application. The applicant did not produce by way of annexures, evidence of facing financial difficulties.
15. Under Rule 18 Employment And Labour Relations Court (Procedure) Rules 2024 the court is allowed to enlarge time as follows:- "18. The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal." Further Rule 80 grants unfettered discretion to the Court to enlarge time as follows:- "80. The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court" The court was not satisfied of the reason of non-compliance. The respondent extended olive branch to the applicant under written submissions for the applicant to comply with deposit terms in 30 days and file the record of appeal in reasonable time. The court for the foregoing reasons allows the application and enlarges the time for compliance with security by 30 days only. Further the record of appeal be filed in 45 days together with written submissions and be served. The Respondent to file submissions within 21 days of service. The lower court be availed in the event the typed proceedings are not ready for the court to hear the appeal on priority basis in an effort to balance



the right of appeal and that right of the Judgment Holder to enjoy the fruits of his judgment. Mention on 5th May 2025 to confirm compliance and issue judgment date.

16. Costs in the cause.

17. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Appellant :- Okello h/b Anyango Opiyo

Respondent: Wamukore

