



Gicheha v Nairobi County Water & Sewerage Company Limited (Petition E083 of 2022) [2025] KEELRC 428 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 428 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E083 OF 2022
AK NZEI, J
FEBRUARY 14, 2025**

BETWEEN

KAGIRI MUKUNDI GICHEHA PETITIONER

AND

**NAIROBI COUNTY WATER & SEWERAGE COMPANY
LIMITED RESPONDENT**

RULING

1. The application before me is the Respondent/Applicant's Notice of Motion dated 5th September, 2024 and expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6(2) of the Civil Procedure Rules 2010 and Section 12 of the *Employment and Labour Relations Court Act*. The following Orders are sought in the said Application:-
 - a. That the application be certified as urgent, and be heard on priority basis.
 - b. That the Court be pleased to issue an order of stay of execution of the Judgment delivered on 30th July, 2024 and the consequential decree pending the hearing and determination of the application inter-partes.
 - c. That the Court be pleased to issue an order of stay of execution of the Judgment delivered on 30th July, 2024 and the consequential decree pending the hearing and determination of the Applicant's intended appeal.
 - d. That costs and incidental to the application be provided.
2. The application is founded on grounds:-
 - a. that in its Judgment delivered on 30th July, 2024, the Court ordered the Respondent/Applicant to pay the Petitioner/Respondent general damages of Kshs.500,000/= as compensation for the violation of his right to fair labour practices, together with costs.



- b. that being dissatisfied with the said Judgment, the Respondent/Applicant filed a Notice of Appeal dated 12th August, 2024, and wrote a letter requesting to be furnished with typed proceedings, also dated 12th August, 2024.
 - c. that the Respondent/Applicant had on 30th July, 2024 been granted 30 days stay of execution, which lapsed on 30th August, 2024; hence the need to issue a stay of execution pending hearing and determination of the Appeal.
 - d. that execution of the impugned Judgment and decree will render the appeal nugatory.
 - e. that the Respondent/Applicant is likely to suffer substantial loss in the absence of stay orders as the Petitioner/Respondent is unlikely to refund the decretal sum in the event the appeal succeeds.
 - f. that the Respondent/Applicant is willing to deposit security in fulfilment of the provisions of Order 42 Rule 6(2) [of the Civil Procedure Rules] as the Court shall order for due performance of the decree, and is willing to comply with whatever other conditions that the court may give [in ordering] the stay of execution.
 - g. that the Petitioner/Respondent will suffer no prejudice as being dissatisfied with the decision [of this court], he has separately preferred an appeal against the same.
 - h. that the application was made within a reasonable time and without delay.
 - i. that it is in the interest of Justice that there be a stay of execution pending hearing and determination of the intended appeal.
3. The application is supported by the supporting affidavit of Titus Tuitoek sworn on 5th September, 2024, and which restates and amplifies the aforestated facts.
 4. The application was placed before the Court (Jacob Gakeri, J) on 12th September, 2024, and an interim stay of execution was ordered; a status quo regarding execution of this Court's decree has since been maintained.
 5. The application is not opposed by the Petitioner/Respondent. Vide his replying affidavit sworn on 30th September, 2024, the Petitioner/Respondent depones as follows:-
 - “ 3. That I am not opposed to the orders for stay of execution sought by the Applicant, subject to the condition that the status quo pertaining before the Judgment was delivered be maintained.
 4. That the Applicant should not be allowed to benefit from the Judgment being stayed; [that] it cannot approbate and reprobate.
 5. That it is in the interest of Justice that the stay of the Judgment be conditional to avoid prejudice against the Respondent.”
 6. The Court (Jacob Gakeri, J) stated as follows in this Court's Judgment delivered on 30th July, 2024; which is the subject of the application for stay of execution:-
 - “ 195. The upshot of the foregoing is that Judgment is entered for the Petitioner against the Respondent as follows:-



- a. Declaration that the Respondent violated the Petitioner's right to fair labour practices.
 - b. Compensation in the sum of Kshs.500,000/=.
 - c. The Respondent's advertisement and re-advertisements for the position of Regional Manager-Informal Settlement Region, dated 14th January, 2021 and 17th November, 2021 respectively are hereby quashed.
 - d. Costs of the petition.”
7. Aggrieved by the aforesaid Judgment, the Respondent/Applicant is shown to have filed a Notice of Appeal on 13th August, 2024, dated 12th August, 2024. The Court has since been informed, in these proceedings, that the Respondent/Applicant has since lodged an appeal against this Court's said Judgment in the Court of Appeal, being Nairobi Court of Appeal Civil Appeal No. E746 of 2024; and that the appeal is pending hearing and determination.
 8. From the wording of this Court's Judgment delivered on 30th July, 2024, orders that are capable of being executed in execution of a decree issuing from the said Judgment are those for payment of Kshs.500,000/= being compensation for violation of the Petitioner's right to fair labour practices and costs of the suit. The Petitioner/Respondent is not opposed to stay issuing. He however states (in his replying affidavit reproduced herein) that the stay should be conditioned to maintenance of the status quo obtaining prior to 30th July, 2024 when this Court's Judgment was delivered. This is quite interesting because in considering an application for stay of execution of a Court's decree, the Court focusses on the decree as passed, but not on situations obtaining prior to its passage.
 9. The single issue for determination in the application before me, in my view, is whether a stay of execution of this Court's decree pending hearing and determination of the Respondent/Applicant's appeal should issue. Section 13 of the *Employment and Labour Relations Court Act* provides that orders or decrees of this court shall be enforceable in accordance with the rules made under the *Civil Procedure Act*.
 10. Order 42 Rule 6(1) of the Civil Procedure Rules provides as follows:-
 - “(1) No appeal or second appeal shall operate as a stay of execution of proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”
 11. Order 42 Rule (6)(2) on the other hand provides as follows:-
 - “(2) No order for stay of execution shall be made under sub-rule (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 made by the applicant.”
12. As already stated in this Ruling, the application herein is not opposed by the Petitioner/Respondent; and the Respondent/Applicant has deponed that it is willing to furnish such security as this Court may order. Further, the application herein was brought without undue delay. The Respondent/Applicant has also expressed doubt in the Respondent’s ability to refund the decretal sum if the same is paid over to him and the appeal preferred against the decree herein eventually succeeds. The Respondent/Applicant has further stated that the decree herein is a money decree and the Respondent/Applicant stands to suffer substantial loss and the appeal rendered nugatory if stay is not granted as sought.
13. The Court of Appeal (Madan, JA) stated as follows in *Butt – vs – Rent Restriction Tribunal* [1979] eKLR:-

“ . . . It is the discretion of the Court to grant or refuse stay, but what has to be judged is whether there are or not particular circumstances in the case to make an order staying execution. It has been said the court as a general rule ought to exercise its discretion in a way so as to prevent the appeal, if successful, from being nugatory, per Brett L J in *Wilson – vs – Church* (No. 2) 12 chD (1870) 454 at 459. In the same case, Cotton L J said at P458:-

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court has to see that the appeal, if successful, is not nugatory.”
14. Having said that, and having considered the written submissions filed, I allow the Respondent/Applicant’s Notice of Motion dated 5th September, 2024 in the following terms:-
 - a. There shall be a stay of execution of this court’s decree pending hearing and determination of Nairobi Court of Appeal Civil Appeal No. E746 of 2024, on condition that the Respondent/Applicant deposits in this Court the decreed sum of Kshs.500,000/= (five hundred thousand Kenya shillings) within fourteen (14) days of this Ruling.
 - b. Costs of the application shall be in the appeal.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:



Mr. Andati for the Petitioner/Respondent

Miss Yala for the Respondent/Applicant

