



Radar Security Limited v Obiele (Employment and Labour Relations Appeal E189 of 2022) [2025] KEELRC 414 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 414 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E189 OF 2022**

SC RUTTO, J

FEBRUARY 14, 2025

BETWEEN

RADAR SECURITY LIMITED APPLICANT

AND

KENNEDY KHATETE OBIELE RESPONDENT

RULING

1. Vide a Judgment which was delivered on 18th October 2024, this Court dismissed an Appeal wherein Radar Security Limited (the Applicant) had sought to overturn the Judgment of the Senior Resident Magistrates Court at Milimani Commercial Courts in which the Respondent was awarded the sum of Kshs 712,966.20 being salary underpayments, rest days worked but not paid, unpaid leave and unpaid overtime.
2. Being dissatisfied with the Judgement delivered on 18th October 2024, the Applicant filed a Notice of Appeal dated 25th October 2024.
3. Contemporaneously filed with the Notice of Appeal, was the Applicant's Notice of Motion seeking the following orders:
 1. Spent.
 2. Spent.
 3. That this Honorable Court be pleased to stay the execution of the orders contained in its judgment dated 18th October 2024 pending hearing and determination of the Appeal before the Court of Appeal at Nairobi.
 4. Spent.



5. That pending hearing and determination of the intended Appeal herein this Honourable Court be pleased to restrain the Respondent, his agents, auctioneers or anyone acting on his behalf from attaching, selling, advertising for sale or interfering in any manner whatsoever with the Applicants goods or properties.
6. Cost of this suit be provided for.
4. The Application is premised on grounds appearing on its face and the Affidavit of Beryl Odhiambo who has described herself as the Applicant's Human Resources Manager.
5. Grounds in support of the Application are that this Court delivered its Judgment on 18th October 2024 dismissing the Applicant's Appeal on a technicality amongst which, that the Appeal was filed out of time without considering the Notice of Appeal dated 9th day of September 2022 appealing from the Judgment of Hon. Selina N. Muchungi delivered on 9th September 2022.
6. It is further averred that the Applicant has preferred a substantial Appeal against the entire judgment of this Court delivered on 18th October 2024 with high chances of success.
7. That further, the Applicant is highly apprehensive that unless stopped, the Respondent will execute the orders of this Court and the Applicant stands to suffer irreparable loss noting that the Respondent has not filed any statement of means to date.
8. The Applicant further avers that the intended Appeal is successful and will be rendered nugatory and justice subverted if execution is not stayed pending hearing and determination of the Appeal.
9. That the application is made without undue delay and that the Respondent will not suffer any prejudice if orders sought are granted.
10. The Respondent, Kennedy Khatete Obiele, opposed the Application through a Replying Affidavit sworn on 16th December 2024. The Respondent avers that he was not been served the Notice of Appeal referenced by the Applicant in the Application.
11. In this regard, the Respondent contends that the limit for serving a Notice of Appeal is seven days while the Notice of Appeal dated 25th October 2024 was served on 19th November 2024.
12. In the Respondent's view, the Applicant should have moved to the Court of Appeal and obtained stay of execution orders.
13. He further states that the Proclamation Notice by High-Class Auctioneers is dated 28th February 2023 whereas the execution in question is dated 18th November 2024.
14. The Respondent further avers that the intended appeal against the entire Judgment delivered on 18th October 2024 has the sole purpose of delaying execution proceedings. That further, the Applicant has not given any good or sufficient cause for the delay.
15. That the Applicant has not satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for stay of execution pending appeal and that the Applicant has failed to demonstrate substantial loss.
16. The Respondent avers that it would be unfair to set aside the Judgment delivered on 18th October 2024 by this Court since litigation has come to an end.



17. According to the Respondent, he will suffer grave prejudice and injustice if the Application herein is allowed, the net effect being denying him timely enjoyment of the fruits of his judgment and the Applicant succeeding in buying time and delaying the matter further.

Submissions

18. The Application was canvassed by way of written submissions. Both parties complied and I have considered their respective submissions.

Analysis and Determination

19. The principal order sought by the Applicant in this Application is a stay of execution of the orders of this Court contained in the Judgment dated 18th October 2024 pending hearing and determination of the Appeal before the Court of Appeal.
20. The record bears that in the Judgment delivered on 18th October 2024, the Court struck out the Applicant's Appeal with costs for being fatally incompetent.
21. Evidently, the orders of the Court did not require either the Applicant or the Respondent to do something or refrain from doing anything. Fundamentally, it was a negative order.
22. Decided cases reveal that a stay order cannot be issued against a negative order. Case in point is *Western college of Arts and Applied Sciences vs EP Oranga & 3 Others [1976] eKLR*, where the Court of Appeal for East Africa stated as follows:
- “But what is there to be executed under the Judgment, the subject of the intended appeal”
The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In *Wilson -Vs- Church* the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this court, in an application for a stay, it is so ordered.” Underlined for emphasis
23. And further, in the case of *Kanwal Sarjit Singh Dhiman vs Keshavji Jivrah Shah [2008] eKLR*, the Court held as follows:
- “The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only...” Underlined for emphasis
24. In the instant case, the Court having struck out the Appeal, did not order either of the parties to do anything or refrain from doing anything. For this reason, the orders being negative, are incapable of execution and as stated herein, the Court cannot order stay of execution of a negative order.
25. For the foregoing reasons, the Court finds no merit in the Application dated 25th October 2024 hence it is hereby dismissed with no orders as to costs.

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

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Wachakana for the Appellant/Applicant

Mr. Mwangi for the Respondent

Kemboi Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

