



Zeze v Njoki (Civil Appeal E227 of 2022) [2025] KEELRC 353 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 353 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL E227 OF 2022
L NDOLO, J
FEBRUARY 13, 2025**

BETWEEN

ELIZABETH KASOHA ZEZE APPELLANT

AND

ISABELLA NJOKI RESPONDENT

RULING

1. By my judgment delivered on 31st October 2024, I varied the award by the trial court in the Appellant’s favour as follows:
 - a. 1 month’s salary in lieu of notice.....Kshs. 15,000
 - b. 4 months’ salary in compensation.....60,000
 - c. Service pay for 8 years (15,000/30*15*8).....60,000
 - Total.....135,000
2. The Respondent filed a Notice of Appeal dated 8th November 2024, indicating her wish to proceed on a second appeal to the Court of Appeal.
3. Alongside the Notice of Appeal, the Respondent filed a Notice of Motion, seeking stay of execution pending appeal to the Court of Appeal. It is this application that is the subject of this ruling.
4. The application is supported by the Respondent’s own affidavit and is based on the grounds that:
 - a. The Appellant obtained judgment on 31st October 2024;
 - b. The Respondent, being aggrieved by the judgment intends to appeal against the entire judgment, at the Court of Appeal;
 - c. The said appeal is meritorious and has overwhelming chances of success;



- d. Should the Appellant execute, the said appeal shall be rendered nugatory and the Respondent shall suffer substantial loss;
 - e. The Respondent is ready and willing to abide by any condition that the Court may issue;
 - f. It would be in the best interest of justice that the application be allowed.
5. The Appellant opposes the application by her replying affidavit sworn on 5th January 2025. She terms the Respondent's appeal as an abuse of the court process, with no chances of success.
 6. The Appellant points out that the Respondent has not provided any security for the due performance of the decree, which she states is necessary to secure her against any potential loss resulting from a stay of execution.
 7. The Appellant depones that the Respondent has not demonstrated to the Court how the execution of the decree would cause irreparable harm or render the appeal nugatory.
 8. The Appellant accuses the Respondent of attempting to prevent her from enjoying the fruits her judgment.
 9. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules, sets the following conditions for grant of orders of stay of execution pending appeal:
 - a. That 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. That such security as the court orders for the performance of such decree or order as may ultimately be binding on the applicant has been given.
 10. Substantial loss with respect to a money decree, as in this case, was defined in *Winfred Nyawira Maina v Peterson Onyiego Gichana* [2015] eKLR as follows:

“The substantial loss under Order 42 Rule 6 of the Civil Procedure Rules especially where a money decree is involved lies in the inability of the Respondent to pay back the decretal sum should the appeal succeed. The legal burden of proving this inability lies with the Applicant and it does not shift. There must be cogent evidence which shows the inability or financial limitation on the part of the Respondent to refund the decretal sum. And it is only when such prima facie evidence is laid before the court by the Applicant that the evidential burden shifts to the Respondent”.
 11. In her submissions dated 21st January 2025, the Respondent cited the decision in *Century Oil Trading Company Ltd v Shell Limited* [2007] KEHC 3016 (KLR) where it was held that in determining the question of substantial loss as it relates to a money decree, the financial position of both the Applicant and the Respondent becomes an issue. In such a case, the Court must balance the interest of the Applicant who is seeking to preserve the status quo pending appeal, and the interest of the Respondent who wishes to enjoy the fruits of their judgement.
 12. In the case now before me, both parties are natural persons, and none of them addressed the Court on their financial capabilities. Balancing the interests of the parties therefore, the order that commends itself is as follows:
 - a. That there shall be a stay of execution of the judgment dated 31st October 2024, subject to the Respondent depositing the entire decretal sum in court, within the next thirty (30) days from the date of this ruling;



- b. In default, the stay order hereby granted shall lapse automatically without any further orders.
13. The costs of the application will be costs in the appeal.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Mwariri for the Appellant

Mr. Majani for the Respondent

