



**Bedi Investments Limited v Ndunga (Appeal E020 of 2024)
[2025] KEELRC 322 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 322 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E020 OF 2024
J RIKA, J
FEBRUARY 12, 2025**

BETWEEN

BEDI INVESTMENTS LIMITED APPELLANT

AND

JOSEPH STEPHEN NDUNGA RESPONDENT

RULING

1. The Appellant filed an application dated 16th July 2024, seeking an order of stay of execution of Judgment/ Decree pending appeal, in Nakuru C.M. E&LRC Cause Number E054 of 2023 between the parties herein.
2. The Judgment of the trial Court, is dated 6th March 2024.
3. The application is founded on the affidavits of the Appellant’s Human Resource Officer, Peris Waithera, sworn on 16th July 2024 and 23rd July 2024.
4. The Appellant explains that after Judgment of the trial Court, it lodged an application for stay of execution pending appeal, which was declined by the trial Court, in a ruling dated 10th July 2024, “hence this application.”
5. The application before the trial Court was dismissed on the ground that the Appellant, failed to establish that it would suffer any loss, substantial or otherwise, if the decretal sum is paid.
6. The Respondent filed a replying affidavit, sworn by his Counsel, Nigel Ouma Mwallo, on 16th September 2024.
7. Counsel restates the holding of the trial Court, that the Appellant, while satisfying other conditions for grant of the order of stay of execution, has not demonstrated that execution would result in substantial loss to the Appellant.



8. The Appellant, through the affidavit of its Human Resource Officer, attaches a letter from its Bank, BOI, indicating that its account was overdrawn, and if not immediately repaid, recovery action would ensue.
9. It is explained that the Appellant sustained financial losses during the Covid-19 pandemic.
10. Parties agreed to have the application considered and determined, on the strength of their affidavits and submissions on record.

The Court Finds: -

11. The Appellant has not presented anything before the Court, to establish that it would sustain substantial loss, if execution proceeds.
12. A letter from its bank, showing that its account was overdrawn, is hardly evidence, of substantial loss that the Appellant would sustain, if execution proceeds.
13. No financial statements, current or relating to the Covid-19 period, have been exhibited by the Appellant.
14. In H.C.C.A No. 1561 of 2007 [Milimani], Century Oil Trading Company v. Kenya Shell Limited, it was held that in considering whether substantial loss will be sustained by the Appellant if execution proceeds, the Court must look at the position of both the Appellant, and the Respondent.
15. The Appellant has not submitted anything, to establish that the Respondent would not be a position to refund the decretal amount, resulting in substantial loss to the Appellant, in event its Appeal is upheld.
16. The High Court explained that substantial loss, is not the normal financial loss that a judgment- debtor incurs, as a result of meeting the decretal sum. The position of the Respondent, the inability to refund, must be established, in arguing that substantial loss would be sustained by the Appellant, in event execution is to proceed.
17. The Appellant has not satisfied the Court, that it would sustain substantial loss or irreparable loss as claimed, if execution proceeds.

It is ordered: -

- a. The application filed by the Appellant dated July 16, 2024 is declined.
- b. No order on the costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAKURU, THIS 12TH DAY
FEBRUARY 2025.**

James Rika

Judge

