



Korane & another v Kiptarus Arap Kurgoren (Employment and Labour Relations Appeal E321 of 2024) [2025] KEELRC 856 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 856 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E321 OF 2024**

**JW KELI, J
MARCH 14, 2025**

BETWEEN

ABDI KORANE APPELLANT

AND

ABDI KORANE APPLICANT

AND

RICHARD KIPTARUS ARAP KURGOREN RESPONDENT

RULING

1. The Applicant vide Notice of Motion application dated 18th November 2024 brought under Sections 1A,1B,3,3A, Civil Procedure Act,2010, and all other enabling provisions of the law sought for the following Orders: -
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this Appeal, this Honourable Court be pleased to issue an order for stay of execution of the Judgement and Decree dated 18th October 2024 delivered by the Hon. Magistrate C.K Cheptoo in the Chief Magistrate’s court at Nairobi , ELRC Case No. E785 OF 2021 for the sum of KSHS. 255,369/- against the appellant / applicant.
 - d. The costs of this application be provided for.



Grounds of the application

2. The applicant stands to suffer substantial and irreparable loss if execution proceeds before the determination of the appeal. The respondent may be unable to refund the awarded sums should the appeal succeed, effectively rendering the appeal nugatory. The appeal raises substantial issues of law and fact, particularly on the interpretation and evidentiary standards applied in the lower court judgment concerning alleged termination by a third party (Respondent's wife) without formal or authoritative proof hence arguable appeal.
3. The application was further supported by the applicant's affidavit of even date where he annexed a copy of the impugned judgment, a copy of a memorandum of appeal, and a copy of a text message relied on by the trial court.
4. The application was opposed by the claimant vide grounds of opposition dated 15th January 2025 as follows:- The application herein and the appeal filed violates the provision of part three rule 11 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 as the appellant had never requested and paid for typed proceedings as required by the rules. The appellant had not demonstrated the harm that would be caused if the decree which is the subject is paid. The appellant had not demonstrated any substantial loss that may result to the applicant if the orders sought are not granted.
5. The respondent prayed that the application be dismissed with cost and court orders that the decretal amount deposited in court be released to the respondents advocates.
6. The application was canvassed by way of written submissions.

Decision

Whether to grant an order of stay of execution.

7. The Court (Procedure) Rules 2024 on stay of execution in case of appeal provides:- “21. (1) Where an application for stay of execution pending appeal has been lodged, the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court.

(2) An application for stay of execution pending appeal shall be filed in the appeal file.” Since the Court rules are silent on the conditions for granting stay of execution in the case of appeal, then the lacuna is addressed by Order 42 Rule 6 (2) of the Civil Procedure Rules to wit:- “(2) No order for stay of execution shall be made under subrule (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 given by the applicant.”
8. The application was unopposed. In *Butt -vs Rent Restriction Tribunal (1982) KLR 417* the Court of Appeal gave guidance on how a Court should exercise discretion in an application for stay of execution and held that:-

“ 1. the power of the Court to grant or refusal an application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.



2. The general principle is granting or reusing a stay is: If there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge's discretion. (sic) (trial Court judgement).
 3. A judge should not refuse a stay if there is a good ground for granting it merely because in his opinion a better remedy may be available to the applicant at the end of the proceedings.
 4. The Court in exercising its powers under order XLI rule 4 (2) (b) of the civil procedure Rules can order security upon application by either party or on its own motion. Failure to put security of costs as ordered with cause the order for stay of execution to lapse". The Court upholds the decision to apply in the application. The court found that there was an arguable appeal and no the delay in filing the application. In order not to render the appeal nugatory in the event it is successful, the Court returns that it is in interest of justice to grant the order of stay of execution pending appeal. The applicant stated it had deposited the full decretal sum in court as ordered as condition for grant of interim order of stay dated 20th November 2024.
9. In the upshot the court held the application merited and granted the following Orders:-
- a. The court is pleased to issue a Temporary Order of stay of execution of the Judgment and Decree of the Trial Magistrate Court, Hon C.K Cheptoo (PM), delivered on the 18th October 2024 pending the hearing and determination of the appeal.
 - b. Costs of the application in the cause.
10. The Court directs the applicant to file the record of appeal within 45 days. Mention on the 5th May 2025 to confirm compliance and for further directions.
11. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF MARCH, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Appellant : - Faith Kiende h/b Nurah – Notice to issue

Respondent: absent

