



**Silet v Kenya Ports Authority (Miscellaneous Application
E054 of 2024) [2025] KEELRC 810 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 810 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E054 OF 2024**

**M MBARŪ, J
MARCH 13, 2025**

BETWEEN

ELIZABETH MKWAJUMWA SILET APPLICANT

AND

KENYA PORTS AUTHORITY RESPONDENT

RULING

1. The respondent, Kenya Ports Authority, filed an application dated 21 February 2025 seeking an order of stay of execution of the judgment and decree issued on 17 January 2025, pending the hearing and determination of the appeal before the Court of Appeal. The application is supported by the affidavit of Mary Ng'ang'a, legal officer of M/s Jubilee Allianz Insurance Company, the insurer of the respondent and aver that the court adopted the award of the Director of Occupational Safety and Health Services (DOSHS) on 7 March 2023, as the judgment of the court on 17 January 2025. The respondent is yet to settle the award as there is an appeal against the judgment.
2. Ms Ng'ang'a averred that the appeal has a high chance of success. If the order of stay of execution is not granted, the applicant will proceed and execute. The respondent is ready and willing to deposit security upon conditions given by the court for the due performance of the judgment.
3. In reply, the applicant filed the Replying Affidavit and avers that no response was filed against the application seeking to enforce the DOSHS award, whose outcome the respondent intends to file an appeal. No draft memorandum of appeal is attached to the application as evidence that there is an intended appeal before the Court of Appeal. Under Rule 77(2) of the Court of Appeal Rules, any intention to appeal must be through a Notice of Appeal filed within 14 days from the date the judgment is issued. The notice filed by the respondent was filed out of time, and there is no time extension for filing the notice.



4. The applicant aver that under Rule 79(1) of the Court of Appeal Rules, the Notice of Appeal should be served within 7 days upon lodgment; in this case, it has never been served. It is apparent that the respondent has not met the threshold for the grant of the orders sought, and there is no intended appeal but an afterthought designed to delay justice. The orders sought should be declined with costs.

Both parties attended and made oral submissions.

5. The respondent, as the applicant, submitted that upon the court's judgment, an appeal was filed, and it is pending before the Court of Appeal. The judgment herein should be stayed to allow the hearing and determination of the appeal, as the same will be negated if the judgment herein is executed. The respondent is willing to deposit security.
6. The applicant submitted that no appeal was filed or served, the notice of appeal was filed out of time, and such notice has not been served against the Court of Appeal rules. The respondent has participated in these proceedings yet failed to file a reply to the application subject of the judgment sought to be challenged. It would be a mockery of justice to stop execution in a case where the respondent has not demonstrated any interest in addressing the issue.

Determination

7. On 11 October 2024, the court delivered a ruling herein following an application by the applicant seeking to enforce the DOSH award issued on 7 March 2023. The court considered all aspects of the applicant, including the Replying Affidavit of George Ochieng, the principal Insurance office of the respondent.
8. The orders sought to be set aside relate to a judgment/decree entered on 17 January 2025. This judgment/decree is not attached.
The only ruling herein was issued on 11 October 2024.
9. On the orders sought that a stay of execution of its judgment/decree entered on 17 January 2025 pending the hearing and determination of the preferred appeal before the Court of Appeal, the subject appeal before the Court of Appeal is not disclosed. Even where such disclosure was made, the intention to appeal alone is insufficient to negate the court orders. The intention to appeal in this case has not been actualized through a Memorandum, notice or other matter that can confirm such intention. The offer to give security for the due performance of the judgment without the foundation of an appeal is not sufficient to stop execution. Sufficient cause must be demonstrated that the applicant seeking a stay of execution has applied the conditions of Order 42 Rule 6 of the Civil Procedure Rules, which is absent in this case.
10. In the case of Standard Chartered Bank Kenya Limited & 10 others v General & 3 others [2025] KECA 433 (KLR) and the case of Bildin Company Limited v Commissioner of Domestic Taxes [2025] KECA 360 (KLR), the court held that the applicants had not to demonstrate the substantial loss they will suffer if an order of stay of execution is not granted.
11. This is aptly captured in Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR), where the court held that;

It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when some other event would render an appeal nugatory. Substantial loss, in its various forms, is the cornerstone of both jurisdictions for granting a stay. That is what has to be



prevented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.

12. Without proof of any appeal pending, the intention to appeal is not apparent, and the loss to be suffered is not addressed; hence, issuing an order of stay of execution of the orders herein will not meet the ends of justice.
13. Accordingly, the application dated 21 February 2025 is without merit and is hereby dismissed with costs to the applicant/respondent.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 13 DAY OF MARCH 2025.

M. MBARŪ

JUDGE

