



**Tarus v Sokowatch Company Limited (Appeal E018 of 2024)  
[2025] KEELRC 841 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 841 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E018 OF 2024  
MA ONYANGO, DO OGAL & DO OGAL, JJ  
MARCH 13, 2025**

**BETWEEN**

**SAMSON TARUS ..... APPELLANT**

**AND**

**SOKOWATCH COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The appeal herein was filed by the Appellant against the decision of Hon. Richard Odenyo, Senior Principal Magistrate dated 16<sup>th</sup> May, 2024 in Eldoret CM.ELRC No. E037 of 2022 vide Memorandum of Appeal dated 6<sup>th</sup> June, 2024.
2. The Respondent also filed an undated Draft Memorandum of Appeal by way of cross appeal.
3. Vide an application dated 9<sup>th</sup> October, 2024, filed under certificate of urgency, the Respondent seeks the following orders:
  - a. spent
  - b. Pending the hearing and determination of this Application, the Honourable Court be pleased to grant an order of stay of execution of the Judgment dated 16<sup>th</sup> May 2024, the Decree issued pursuant to the Judgment in Eldoret CM.ELRC E037 of 2022, Proclamation dated 7<sup>th</sup> October 2024 against the Respondent, their servants, officers, employees, agents, and or assigns.
  - c. Pending the hearing and determination of the Appeal in Eldoret ELRC Appeal No. E018 of 2024 (the Appeal), the Honourable Court be pleased to grant an order of stay of execution of the Judgment dated 16<sup>th</sup> May 2024 in Eldoret CM.ELRC E037 of 2022, the Decree issued pursuant to the Judgment and the Proclamation Notice dated 7<sup>th</sup> October 2024.



- d. The Honourable Court be pleased to issue such further Orders as it may deem fit, appropriate, and expedient to grant in the circumstances of this matter for purposes of compliance and/or other just consideration.
  - e. Costs of this application be borne by the Respondent.
4. Upon hearing the application ex parte, I granted the following orders:
- i. The application dated 9<sup>th</sup> October, 2024 is certified urgent and fixed for inter partes hearing on 29<sup>th</sup> October 2024.
  - ii. In the meantime there shall be stay of execution of the decree and judgement in Eldoret CM. ELRC No. E037 of 2022 pending inter partes hearing of the application.
5. The Appellant filed a Replying affidavit sworn by himself on 18<sup>th</sup> of October, 2024 in which he avers that the Respondent seeks this court to address the validity of the execution proceedings being undertaken by the Respondent in Eldoret Chief Court ELRC. No. E037 of 2022 which the court lacks jurisdiction to address as section 34 of the Civil Procedure Act Cap. 21 confers jurisdiction exclusively to the court executing the decree.
6. That section 13 of the Employment and Labour Relations Court Act, Cap. 8E requires that execution of decisions of the court be governed by the Civil Procedure Act Cap. 21 and which law requires a challenge to execution proceedings to be undertaken in the record of the suit in which the execution is being undertaken.
7. That the court also lacks jurisdiction to grant a stay of execution where a party has not filed an appeal or across appeal by dint of order 42 rule 6 of the Civil Procedure Rules 2010.
8. That the Civil Procedure Act Cap. 21 does not place a bar against a decree-holder executing a decree that the judgment-debtor like in this case has not challenged on appeal and sought execution.
9. That the doctrine of approbation and reprobation is inapplicable to this matter as the memorandum of appeal does not contest the award of notice and party and party costs.
10. That the Respondent was served with the memorandum of appeal on the June, 2024 as can be discerned from Che affidavit of service sworn on 27<sup>th</sup> June, 2024.
11. That the Respondent had 21 days to file a across-appeal in accordance with rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and which it is in default of.
12. The application was dispensed with by way of written submissions. The Applicant's submissions are dated 21<sup>st</sup> November, 2024. The Respondent's submissions are dated 25<sup>th</sup> November, 2024.
13. The Applicant submitted that Rule 73(1) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides that execution of this court's decrees and orders shall be in accordance with the Civil Procedure Rules. That Order 42 Rule 6(1) and (2) provide for stay of execution pending appeal.
14. It is the Applicant's submission that the Respondent's argument that this court has no jurisdiction to hear the application on grounds that an application for stay can only be instituted in the lower court is not the correct position as Rule 21 of the ELRC (Procedure) Rules, 2024 provides that in an application for stay to the court the applicant shall in the supporting affidavit declare if such an application has been made in any other court and that an application for stay shall be filed in the Appeal file.



15. It is submitted that in *Matata & another (Civil Appeal E34 of 2024) [2024]* the court stated that the three conditions to be fulfilled in an application for stay pending appeal are substantial loss that may result to the applicant unless stay execution is granted; that the application is filed without unreasonable delay; and, security as the court orders for due performance.
16. It is submitted that substantial loss was defined in *Kenya Post Office Savings Bank v Aguvasu (ELRC Appeal E293 of 2024)*; *Tropical Commodities Suppliers Ltd & other v International Credit Bank Ltd (In Liquidation) [2004] EA 331* and in *Century Oil Trading Company Ltd v Kenya Shell Limited (Milimani) HCMCA No. 1561 of 2007* to mean what has to be prevented by preserving the status quo because such loss would render the appeal nugatory and not necessarily the monetary value of the decree.
17. The Applicant submitted that the loss it will suffer should orders of stay of execution not be granted is not only monetary but a violation of its rights which cannot be compensated by money. It is submitted that in the present case the Applicant would be forced to pay the decretal sum and again defend an appeal by the Respondent through his appeal.
18. For emphasis the Applicant cites the decision in *Samvir Trustee Limited v Guardian Bank Limited Nairobi (Milimani) HCCC 795 of 1997 (2007) eKLR* where Warsame J (as he then was) stated that an application for stay pending appeal must ensure that parties fight on a level playing ground and on equal footing in an attempt to safeguard the rights and interests of both parties. That the court's overriding objective is to ensure that the execution of one party's right should not derogate or defeat the right of the other.
19. The Applicant further relied on the decision in *Uzuri Foods Limited v Manzi* on the subject of execution where both parties are dissatisfied with the judgment and the cases of *Banque De Moscou v Kindersley 2 All EER 549* and *Evans v Bartlam* on approbation and reprobation.
20. On the issue of unreasonable delay and security the Applicant submitted that the application had been brought without unreasonable delay and it is willing to comply with any orders on deposit of security as the court may order.
21. For the Respondent it is submitted that the Applicant has not filed any appeal or cross appeal against the decision that is subject of execution. That in the absence of the same this court has no jurisdiction to entertain the motion for stay of execution. He relies on *Benson Ngugi Muiruri v Kenya National Capital Corporation Limited*.
22. It is further submitted that the Civil Procedure Rules do not place a bar on execution in items not challenged in the appeal.
23. It is further the Respondent's submission that the Applicant has not demonstrated substantial loss and has not offered any security as required in Order 42 Rule 6 of the Civil procedure Rules. It is further submitted that the application was made after a delay of five and a half months, judgment having been delivered on 16<sup>th</sup> May, 2024 and the Application filed on 9<sup>th</sup> October, 2024.
24. The Respondent prayed that the application be dismissed.

### **Analysis and Determination**

25. I have considered the application and affidavit in support thereof, the replying affidavit and the rival submissions of the parties. The issues that arise for determination are whether the orders sought in the application are merited and whether the same should be granted or declined.



26. The circumstances in the instant application for stay of execution are not like other ordinary applications of this nature. In the instant case the Appellant sought to execute the decree in the trial court in spite of having filed an appeal against the said decision. It is upon being served with the warrants of attachment by the Appellant that the Respondent filed the instant application.
27. In the Memorandum of Appeal the Appellant does not state whether he is appealing against the whole of the judgment or only a portion thereof. It is therefore a presumption that the appeal is against the whole judgment.
28. In the affidavit in support of the application for stay of execution the Respondent states that it intends to lodge a cross appeal but is waiting to be served with the record of appeal before doing so.
29. The Employment and Labour Relations Court (Procedure) Rules 2024 provides at rule 17 that cross appeals shall be lodged 21 days from date of service of Memorandum of Appeal. The Applicant's averment that it is waiting to be served with record of appeal before lodging its cross appeal is therefore not in congruence with the law.
30. With respect to the prayers in the application, the Appellant having preferred an appeal against the judgment and having not specified what part of the judgment it is appealing against in his Memorandum of Appeal, it is unconscionable for him to execute the portion of the judgment that was in his favour.
31. It is for this reason that I hereby allow the application for stay of execution of the judgment and decree in Eldoret CMELRC No. E037 of 2022 pending the hearing and determination of the appeal herein.

**DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 14<sup>TH</sup> DAY OF MARCH 2025**

**MAUREEN ONYANGO**

**JUDGE**

