



**Krystalline Salt Limited v Nyakioga (Employment and Labour Relations Appeal E023 of 2024) [2025] KEELRC 1765 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1765 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E023 OF 2024**

**K OCHARO, J  
APRIL 30, 2025**

**BETWEEN**

**KRYSTALLINE SALT LIMITED ..... APPLICANT**

**AND**

**PAUL NYANDIKA NYAKIOGA ..... RESPONDENT**

**RULING**

1. By a Notice of Motion application dated the 13<sup>th</sup> November 2024, the Appellant/ Applicant sought the following orders;
  - a. The Application be certified as urgent and service thereof be dispensed with in the first instance.
  - b. Pending the hearing and determination of this application inter partes, this Honourable Court will be pleased to stay the execution of the judgment delivered by Hon. James Ongondo on 30<sup>th</sup> October 2024.
  - c. Pending the hearing and determination of this Appeal, this Honourable Court will be pleased to stay the execution of the Judgment delivered by Hon. James Ongondo on 30<sup>th</sup> October 2024.
  - d. The costs of this Application be provided for.
2. The application is anchored on the grounds set out on the face thereof and the supporting affidavit sworn by Awour Mauleen Nelly, Counsel for the Appellant/Applicant.
3. The Respondent resisted the application on the grounds obtaining in his replying affidavit sworn on 23<sup>rd</sup> November 2024.



### **The Application.**

4. The application is premised on the following prime grounds;
  - a. Judgment in the lower court matter was delivered for the Respondent on 30<sup>th</sup> October 2024 in the sum of KShs: 502,593 with interest and costs.
  - b. The judgment was delivered without notice to the parties in the absence of both parties.
  - c. Owing to the fact that the Applicant was not aware of the judgment date, they were not able to pray for a stay of execution before the trial court.
  - d. The Applicant only learned of the judgment on November 13, 2024, when they attended the Registry to follow up on the matter.
  - e. The grounds raised in the appeal herein are arguable.
  - f. If the application isn't allowed, the Appellant/Applicant will suffer irreparable loss.
  - g. The Appellant/Applicant is ready and willing to deposit the decretal sum in a joint interest-earning account as security pending the appeal.
  - h. Lastly, the application has been brought up timely without undue delay.

### **The Opposition.**

5. As can be discerned from the replying affidavit, the Respondent opposes the instant application on the following grounds;
  - a. The Applicant has not demonstrated what substantial loss is likely to be suffered if the order of stay of execution isn't granted.
  - b. The deponent of the supporting affidavit has not shown, by submitting a letter of authority from the Applicant company, that she has the authority to depose the affidavit on its behalf.
  - c. The allegation that the appeal shall be rendered nugatory if the order herein sought isn't granted has not been supported with any material. There isn't the slightest evidence that the decretal sum cannot be recovered if the sum is paid out, and that if the appeal succeeds, recovery of the same shall be impossible.
  - d. The supporting affidavit has been sworn contrary to the provisions of Order 19 of the Civil Procedure Rules by a person without the knowledge of the matters deposed to therein, rendering the application incompetent and a good candidate for striking out.
  - e. The Respondent should be allowed to enjoy the fruits of his Judgment. However, should the Court be inclined to grant stay pending appeal, it should be on condition that half of the decretal amount be released to him.

### **The Appellant's / Applicant's submissions.**

6. Counsel for the Appellant submits that the guiding principles on applications for stay of execution pending appeal are set out in Order 42 of the Civil Procedure Rules. The Order sets out the conditions that an applicant approaching the court for a stay must fulfil.
7. The Applicant filed the instant application promptly upon discovering that the judgment had been delivered.



8. If the orders sought are not granted, the Appellant /Applicant stands to suffer substantial loss as the Respondent intends to execute the Judgment, and the Respondent may not be able to refund the money if the appeal succeeds, rendering the appeal nugatory. To buttress this point, reliance is placed on the case of National Industrial Credit Bank Ltd vs Aquinas Francis Wasike and Another [2006] eKLR.
9. The Applicant will suffer a substantial loss of over KShs. 502,593 in costs and interest. The Respondent hasn't demonstrated that he could refund the money if called upon to.
10. The purpose of the security needed under Order 42 is to guarantee the performance of such decree or order as may ultimately be binding on the Applicant-Arun C. Sharma v-Ashana Raikundalia t/a Rairundalia & Co. Advocates & 2 others [2014] eKLR. To meet the condition for providing security pending the Appeal, the Applicant has undertaken to deposit the decretal sum in a joint interest-earning account in the names of both Counsel for the parties.

### **The Respondent's Submissions**

11. Despite this Court's directions, the Respondent filed none.

### **Analysis and Determination**

12. The law concerning applications for stay of execution pending appeal is set out in Order 42 of the Civil Procedure Rules. It is imperative to state that the applicability of the provisions of the Order is expressly sanctioned by the Employment and Labour Relations Court [Procedure]Rules, 2024.
13. Whether to grant or not the order for stay of execution when approached by a party is a matter of discretion. However, it is axiomatic to note that the discretion isn't a wildcat and unaccountable discretion, granted capriciously with whim. It must be exercised judiciously and within the principles set.
14. For an Applicant to successfully urge his application for stay pending appeal, he must demonstrate that a substantial loss will result unless the order is granted; the application has been filed without undue delay; and 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. The wording of Order 42 of the Civil Procedure is precise; the conditions are conjunctive, not disjunctive. A failure to prove one of them is as fatal as not proving the presence of all.
15. Where an application for stay is stated to be supported by an affidavit, the affidavit must be proper and one from which details establishing the conditions mentioned above can be discerned. Proper in the sense that it has to be sworn in conformity with the procedure rules that govern affidavits, one that is not couched in a generalised, speculative, or vague manner, explaining how the conditions fit in his case.
16. The Applicant explained that the lower court judgment was delivered without notice to the parties and that they only learned of the delivery on November 13, 2024. On the same day, they filed the instant application. The Respondent hasn't challenged this averment, as a result, I find no difficulty concluding that the application was filed timely without undue delay.
17. With great respect, the Applicant made a bald assertion in the supporting affidavit that if the orders of stay of execution aren't granted, they will suffer substantial loss. The assertion is so dry, without details regarding how, why and to what extent, therefore, inviting this Court to venture into the realm of speculation, an invitation which the Court is unwilling to embrace. Consequently, the Applicant's



application fails on this count, as they have failed to demonstrate that they will suffer substantial loss if the application is not granted.

18. This Court isn't lost on the fact that the Applicant's Counsel has attempted to explain why she thinks there would be a substantial loss in the submissions filed. The factual explanation could have been good material for an affidavit supporting the application, but it wasn't. It has long been a principle of law that submissions by parties will not be a substitute for evidence. Resultantly, I hold that the explanation, which is even couched speculatively and by a deponent who cannot authenticate the correctness of the averments, does not come to the aid of the Applicant's application.
19. The Applicant's Counsel submitted that the Respondent hasn't demonstrated that he can refund the decretal sum if paid out to him, but he is called upon to refund the same on the appeal's success. In my view, he would only bear the burden if the Applicant had stated in the supporting affidavit that he was a man of no means, incapable of refunding the sum as and when called to. On this, I find that the decision cited by the Applicant- National Industrial Credit Bank Ltd v Aquinas Francis Wasike and Another [Supra] is inapplicable in the circumstances of this matter.
20. This Court is consequently of the view that the Applicant's application doesn't meet the threshold set out in Order 42 of the Civil Procedure Rules. The application is dismissed.
21. Orders accordingly.

**READ, SIGNED AND DELIVERED ON THIS 30<sup>TH</sup> DAY OF APRIL, 2025**

**OCHARO KEBIRA**

**JUDGE**

