



REPUBLIC OF KENYA



KENYA LAW
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Kenya Chemical Workers Union v Agri Seeds Co (K) Limited (Cause E0440 of 2022) [2025] KEELRC 1999 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 1999 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E0440 OF 2022**

CN BAARI, J

JULY 4, 2025

BETWEEN

KENYA CHEMICAL WORKERS UNION CLAIMANT

AND

AGRI SEEDS CO (K) LIMITED RESPONDENT

RULING

1. For determination is the Respondent/Applicant's Motion application dated 21st February, 2025, brought pursuant to Sections 3, 12 (3) and (4) of the *Employment and Labour Relations Court Act, 2011*, Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and Order 42 Rule (6) of the Civil Procedure Rules, 2010. The Applicant seeks orders THAT: -
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. The execution of the Judgment delivered on 23rd January 2025 and any resultant decree therefrom be stayed pending the filing, hearing and determination of the Applicant's intended Appeal.
 - v. This Honourable Court be pleased to stay further proceedings in the instant suit pending hearing and determination of this application and the Applicant's intended Appeal.
 - vi. The costs of and occasioned by this application be provided for.
2. The application is supported by grounds on the face of the motion and the affidavit of Wellington Wasike sworn on 21st February, 2025. The crux of the Motion is that by a Judgment delivered on 23rd



January 2025 by Hon. Lady Justice Maureen Onyango, the Honourable Court awarded the Claimant/Respondent's members compensation for unfair labour practices.

3. The Applicant argues that it is aggrieved by the said decision, and has filed a Notice of Appeal and applied for typed and certified copies of the proceedings and Judgment to enable it file an appeal.
4. It is the Respondent/Applicant's position that the decretal amount which is to be computed by the Applicant, will be a colossal amount, and which will definitely prejudice its operations and occasion substantial strain and loss, thus the urgent application for stay of execution of the decision of the Court.
5. The Applicant states that it has no knowledge of the whereabouts of the numerous former employees suing through the Claimant or their financial capability, and it will therefore, likely be unable to recover the decretal sum from them should its intended appeal succeed.
6. The Applicant avers that it has an arguable appeal with high chances of success, and further that the application herein has been filed without unreasonable delay, the Judgment having been delivered on 23rd January 2025.
7. The Applicant contends that unless an order of stay of further proceedings and a stay of execution is granted, its intended appeal will be rendered nugatory as the Claimant is likely to execute the decree from the Judgment, thereby defeating the very purpose and object of the appeal.
8. The Applicant states that it is ready and willing to abide by any conditions and terms as the Court may deem fit to impose.
9. The Claimant/Respondent opposed the Motion vide a Replying affidavit sworn by Peter Ouko Onyango on 3rd March, 2025. The Claimant/Respondent avers that in compliance with the judgment of this Court, it has prepared and filed the necessary tabulations for the compensation due to each of the affected fifty-five (55) employees, and that the said tabulations were filed with this Court on 18th February 2025.
10. The Claimant avers further that the tabulation serves to concretize the compensation order, as the judgment did not specify the monetary amounts to be awarded to each of the grievants, and further asserts that the judgment to date remains unfulfilled.
11. The Claimant avers that the Respondent/Applicant has failed to demonstrate that they would suffer substantial loss or irreparable harm if the judgment is not stayed. It is the Claimant's argument that the Respondent's application is an attempt to delay payment to the workers who have been denied due compensation for an extended period, and that a stay would serve to perpetuate this delay.
12. It is the Claimant's position that execution has not yet commenced and therefore, the orders sought herein are unwarranted. It argues further, that the mere fact that execution is anticipated does not in itself constitute substantial loss, as the execution process is a lawful and statutory procedure that must be allowed to take its course.
13. The Claimant union avers that the successful litigant is entitled to enjoy the full benefits and fruits of their judgment, and as such, it should be afforded the protection of this Honourable Court. It states further, that in the absence of any security being offered by the Respondent to cover the eventuality of an unsuccessful appeal, this Court should ensure that the rights of the Claimant Union are not prejudiced by the Respondent's application.
14. The Claimant argues that the Respondent has failed to establish any tangible or demonstrable loss, and their application is premised on mere assumptions and conjecture, without providing sufficient legal grounds or evidence to justify the stay.



15. The Claimant states that no appeal has been duly filed or instituted by the Respondent against the judgment in question, and that all that the Respondent has annexed is a Notice of Appeal, which, upon scrutiny, clearly evidences that it was filed purely in contemplation of seeking an order for stay of execution, and does not, in any meaningful way, constitute a bona fide appeal.
16. The Claimant finally argues that it is in the interest of justice that the Respondent's application be dismissed in its entirety, with costs awarded to it.
17. Parties urged the Motion by way of written submissions which have been duly considered.

Determination

18. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules, provides for stay of execution as follows:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under sub-rule (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.”

19. It is trite law that grant of an order of stay is an equitable remedy and which is given at the discretion of the Court. The general rule however, is that if there is no overwhelming hindrance, a stay of execution ought to be granted so that an appeal, if successful, may not be rendered nugatory. Cotton LJ in *Wilson v Church* (No 2) 12 Ch D [1879] 454 held:

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

20. The Court's exercise of discretion in staying execution of a Judgment, is guided by the grounds set out in the case of *Stephen Wanjohi v Central Glass Industries Ltd Nbi HCCC No. 6726 of 1991* where the Court emphasized that:

“For the Court to grant stay of execution there must be:

(a). Sufficient cause.

(b). Substantial loss.



(c). No unreasonable delay and security offered for due performance of the decree.”

20. The 55 grievants in this matter being represented by the Claimant union having succeeded in their claim, and in possession of a valid court judgment, are no doubt entitled to enjoy the fruits of their judgement.
21. The Applicant’s position is that it has no knowledge of the whereabouts of the numerous former employees suing through the Claimant union or their financial capability, and is therefore, unlikely to recover the decretal sum from them should its appeal succeed.
22. The Claimant union has not in any way controverted the assertion by the Respondent/Applicant by demonstrating the grievants’ ability to refund the amount of the award in the event that the Applicant’s appeal succeeds. In *Century Oil Trading Company Ltd v Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007*, the court stated: -

“.....The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgment.”
23. It is also evident that the Respondent/Applicant’s application was lodged timeously, the judgment herein having been delivered on 23rd January, 2025 and the instant motion filed on 21st February 2025.
24. On the Applicant’s position that it has an arguable appeal, it has severally been held that an arguable appeal is not necessarily one that must succeed.
25. It is also evident from the court record that the notice of appeal was filed on 23rd January, 2025; the same day the judgment herein was rendered.
26. Finally, on the issue of costs, although the Respondent/Applicant has not committed itself on the security for costs, it has confirmed to this Court its readiness to abide by the orders of the court in that respect.
27. In view of the foregoing, I find and hold that the Respondent/Applicant’s Motion meets the conditions set out under Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules for grant of stay orders. The application thus succeeds in the following terms: -
 - a. That the execution of the Judgment delivered on 23rd January 2025 in this matter, and any resultant decree therefrom be and is hereby stayed pending the hearing and determination of the Applicant’s Appeal.
 - b. That the Respondent/Applicant is hereby ordered to deposit in Court a sum of Kshs.3,500,000 being part of the decretal sum within 30 days of this order, and in default, the Claimant shall be at liberty to execute.
 - c. I find the prayer for stay of further proceedings devoid of merit and is dismissed.
 - d. Costs shall abide the appeal.
28. Orders accordingly.



SIGNED, DELIVERED AND DATED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF JULY, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Mutongoi present for the Claimant/Respondent

Ms. Anne Kadima present for the Respondent/Applicant

Ms. Wali – C/A

