



**Osoro v University of Nairobi (Cause E720 of 2021)  
[2024] KEELRC 375 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 375 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E720 OF 2021  
J RIKA, J  
FEBRUARY 29, 2024**

**BETWEEN**

**RONALD WANDERA OSORO ..... CLAIMANT**

**AND**

**UNIVERSITY OF NAIROBI ..... RESPONDENT**

**RULING**

1. Judgment was delivered in favour of the Claimant on 31<sup>st</sup> May 2023.
2. The Claimant thereafter applied for execution of the decree, in the sum of Kshs. 3,000,130.
3. He instructed Moonstar Enterprises Auctioneers, who proclaimed the Respondent's property, including 14 motor vehicles.
4. The Respondent states that the Auctioneers have threatened to sell by way of public auction, the Respondent's property, if the decretal sum, and the Auctioneer's cost of Kshs. 396,000 are not paid.
5. The Respondent has applied for stay of execution of Judgment and Decree. It explains through the Affidavit of its Senior Assistant Registrar Harrison S. Akala, sworn on 20<sup>th</sup> September 2023, that the Respondent has already lodged an Appeal at the Court of Appeal against the Judgment of the Court. The Appeal has been registered as Civil Appeal Number E687 of 2021.
6. The Respondent also relies on the Certificate of Urgency dated 16<sup>th</sup> November 2023, prepared by its Advocate Fredrick Collins Omondi. The Advocate restates the grounds for the Application, relied upon by Akala in his Affidavit.
7. The Respondent submits that it has an arguable Appeal with a high probability of success; the Notice was filed timeously, within 2 days of the delivery of Judgment; the Claimant has not exhibited any documents to show that he is a Pharmacist practicing in Nairobi; he has not demonstrated that he has the means and capacity to refund the decretal sum; he is of unknown means; and it would be



imprudent to grant an order of stay of execution, on the condition that the decretal sum is held in a joint bank account of the Parties' Advocates, because the Respondent is a public entity, and its funds are public funds.

8. The Claimant opposes the Application, relying on his Affidavit sworn on 24<sup>th</sup> January 2024. He states that the Application has no merit. It is aimed at frustrating the Claimant from enjoying the outcome of his Claim. The Respondent was indolent, and neglected to file for stay of execution for at least 6 months. Judgment was delivered in May 2023, and the Application lodged in September 2023. The Respondent has not shown a willingness to comply with any orders issued by the Court on security. The Claimant states that he is a registered Pharmacist, practicing in Nairobi, and is not a man of straw as suggested by the Respondent. There is no risk that the Appeal would be rendered nugatory. If the Court is inclined to grant the Application, it should be on the condition that the decretal amount is deposited in a joint-interest bank account, in the names of the two Advocates.
9. The Application was heard on 9<sup>th</sup> February 2024. The Advocates restated the contents of the respective Parties' Affidavits on record, and adopted their lists of judicial authorities on the principles of grant of orders of stay of execution.

### **The Court Finds:**

10. The orders sought require the Court to balance the right of appeal, against the right of a litigant, to full realization of the outcome of his Claim.
11. The Respondent has moved the Court of Appeal, and has already lodged an Appeal against the Judgment of this Court, and there is need therefore, to facilitate the Parties, on the hearing of that Appeal, without rendering the probable success of the Appeal moot.
12. The Respondent appears in large, to have met the requirements for grant of orders of stay of execution, but also appears largely unconcerned, about certain important requirements, in particular, those that are aimed at protecting the position of the Claimant, who as it stands, has a Judgment of the Court, whose fruits he is entitled to enjoy.
13. The submission by the Respondent that it is a public entity, with the ability to pay the Claimant his dues if the Appeal is not successful, is not supported by evidence of the Respondent's own financial wherewithal. The Respondent submits that the Claimant has not given evidence of his ability to refund, in event the Appeal succeeds, while it does not exhibit evidence of its own ability to satisfy the decretal sum, in event the Appeal fails. No security in any form, has been offered by the Respondent. The Respondent just brandishes its public entity credentials. There are many public entities which are teetering on the brink of bankruptcy, and it is therefore hard to accept, that the Respondent's word on its ability to satisfy the decree, can be taken to the bank.
14. The Court does not think that public entities are exempted from offering security on appeal, or that public funds, cannot be held in a joint-interest bank account, in the name of the Parties' Advocates. Public and private litigants both have equal protection of the law.
15. The Court is persuaded that the Claimant is not a man of straw. He was employed by the Respondent as a Tutorial Fellow, the equivalent of an Assistant Lecturer, in the Respondent's Department of Pharmaceutics and Pharmacy Practice. He is a practicing Pharmacist. The Court does not believe that the Respondent employed and created a man of straw, in the form of the Claimant, who is completely necessitous, and incapable of refunding the Respondent any portion of the decretal sum, in event the Appeal succeeds.



**It Is Ordred**

- a. An order of stay of execution of Judgment and Decree in the Cause herein is granted on the following conditions: -
- I. The sum of Kshs. 1,000,000 to be paid by the Respondent to the Claimant through his Advocates.
  - II. The balance of Kshs. 2,130,000 to be deposited in joint-interest earning bank account in the name of the Parties' Advocates.
  - III. The Respondent to pay auctioneers' costs at Kshs. 396,000.
  - IV. The Respondent to comply with these conditions within 21 days of the Ruling, in default execution to proceed.
- b. No order on the costs of the Application.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 29<sup>TH</sup> FEBRUARY 2024.**

**JAMES RIKA**

**JUDGE**

