



Shree Cutchi Satsang Swaminarayan Temple v Owuor (Employment and Labour Relations Cause E079 of 2022) [2024] KEELRC 251 (KLR) (13 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 251 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E079 OF 2022
AN MWAURE, J
FEBRUARY 13, 2024**

**BETWEEN
SHREE CUTCHI SATSANG SWAMINARAYAN TEMPLE CLAIMANT
AND
JIMMY OCHIENG OWUOR RESPONDENT**

RULING

1. The appellant vide applicant dated 21st June 2022 seeks the following prayers:
 1. This application be certified urgent and service thereof be dispensed with in the first instance.
 2. There be a stay of execution of the judgment delivered by the hon. D.O Mbeja (PM) on 31st March 2021 in Milimani CMCC NO. 81 of 2017 Jimmy Ochieng Owuor vs Shree Cutchi Satsang Swaminarayan Temple pending the hearing and determination of this application.
 3. The appeal herein be admitted out of time.
 4. There be a stay of execution of the judgment delivered by the hon. D.O Mbeja (PM) on 31st March 2021 in Milimani CMCC NO. 81 of 2017 Jimmy Ochieng Owuor vs Shree Cutchi Satsang Swaminarayan Temple pending the hearing and determination of this application
 5. The costs of this application be provided for.
2. The appellant swore a supporting affidavit by its board member Suresh Mepami and stated that the court delivered its judgment without giving him notice in contravention of directives by National council of administrative of justice.
3. He avers that the appellant's advocates applied for a copy of judgment by then letter dated 21st August 2021.



4. He says that despite following the same consistently they received the copy of judgment on 16th June 2022.
5. He says the time to appeal has since lapsed but since he is aggrieved by the said judgment they wish to lodge an appeal.
6. He further says the appeal has high chance of success as it has arguable content.
7. He further says the physical address of the respondent are unknown and also his financial means are unclear and so is in the interest of justice to stay the execution of judgment pending the hearing and determination of the appeal.
8. He says they are ready to furnish security as may be ordered by the court.
9. The respondent did not file a reply to the application and no submissions as well.
10. The court considered the appellants written submissions dated 13th February 2023.

Analysis and determination

11. The issue for determination is whether the appellant has made a case to admit the appeal out of time. The appellant avers judgment was delivered in their absence on 21st August 2021. This was at the time of Covid 19 pandemic. He avers that upon being made aware that the same had been delivered he applied for a copy of judgment which was not availed until June 2022. The appellant then came with this application on 21st June 2022.
12. The appellant has set out a valid ground for not having filed the appeal on time. In the case of Nairobi HCCA NO E068 of 2021 *Zacheaus Ouma Juma vs Nicholas Kirangi* where court observed that covid 19 pandemic was real and what was happening to the courts at the time especially in Nairobi is common knowledge. The court then observed that the delay was not deliberate despite the period taken.
13. Similarly, in this case the circumstances that made the appellant unable to file the appeal was valid and reasonable.
14. There is an affidavit of service dated 22nd July 2022 where the process server averred he served the respondent with the application. The respondent however did not file a replying affidavit or submissions. The application is therefore not opposed as at now.
15. The court under the circumstances finds it reasonable to give the appellant an opportunity to file its appeal out of time. The court is therefore pleased to grant an order for stay of execution of the judgment delivered on 31st March 2021 by Hon. D.O. Mbeja.
16. The appellant is ordered to deposit the entire decretal amount with the court within 45 days from today's date being the security herein as a condition of granting the order prayed hereto.
17. The appellant to file the record of appeal within 45 days from the date of this ruling.
18. Failure to comply to orders in paragraphs 16 and 17 execution will proceed.
19. Costs will be in the intended appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF FEBRUARY 2024.



ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

