



Kenya Union of Commercial Food and Allied Workers v Worldwide Movers (K) Limited (Cause E539 of 2022) [2024] KEELRC 264 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 264 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E539 OF 2022
NJ ABUODHA, J
FEBRUARY 8, 2024**

BETWEEN
KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT
AND
WORLDWIDE MOVERS (K) LIMITED RESPONDENT

RULING

1. By a notice of motion dated 5th July, 2023 the respondent sought orders in the main that;
 - a. That this application be certified urgent and be heard ex - parte in the first instance.
 - b. That The Honorable court be pleased to extend time for filing the Notice of Appeal in relation to the Judgment delivered on the 19th May 2023 by the Hon. Justice Abuodha.
 - c. That the Court be pleased to grant a stay of execution of the Judgment of Hon. Justice Abuodha delivered on the 19th of May 2023 pending the inter parties hearing and determination of this application.
2. The application was supported by the affidavit of Neena Prior who deponed on the main that
 - a. That I am a female adult of sound mind a Director of the Respondent Company duly authorized well conversant with the facts of this case hence competent to swear this affidavit.
 - b. On the 19th day of May 2023, Honourable Justice Abuodha delivered a judgment in relation to the main suit herein, (annexed herein and Marked “NP J ” is a copy of the said judgment of 10th February 2023).



- c. That I am informed by my Advocates on record that subsequent to the Judgment being delivered they sought for a copy of the Judgment however it was only until the 16th June 2023 that they managed to get a copy of the typed judgment annexed above.
 - d. That I have perusal the copy of the Judgment and I intend to lodge an appeal against the entire decision of the court based on the following grounds set out in the draft memorandum of appeal; (annexed herein and Marked “NP 2” is a copy of the draft memorandum of appeal)
 - i. That the Learned Judge erred in law and in fact in holding that the respondent did not prove that three of its staff were in management;
 - ii. That the Learned Judge erred in Law and in fact by finding that the Respondent was expected to produce written statements in support of the Respondents contention that 3 of its staff were no unionizable.
 - iii. That the Learned Judge erred in Law and in fact by finding that the union had proved its case without determining whether the union had achieved the legal threshold.
 - e. That the Claimant has in the meantime shared a draft recognition agreement to the Respondent for execution despite the fact that most of the Respondents employees are not unionisable, (annexed herein and Marked “NP 2” is a copy of the letter dated 9th June 2023 from the Claimant Union)
 - f. That in the above letter dated 9th June 2023 the Claimant has in the same vein directed the respondent to pay Kshs 40,000/= to cater for its costs.
 - g. That I am informed by my advocates on record which advise I do believe to be true that one of the preliminary steps in lodging an appeal is to file a Notice of appeal within 14 days of delivery of the decision.
3. Extension of time to file an appeal and stay of execution are Matters within the discretion of the court. Such discretion however must be exercised judiciously taking into consideration the cause and length of the delay and prejudice if any that may be occasioned to the respondent if the order is granted.
 4. The judgment herein was delivered on 19th May, 2023. The applicant avers that its only managed to get a typed copy of the judgment on 16th June, 2023. This was after the fourteen days of lodging of notice of appeal had lapsed. The delay being less than two weeks after the lapse of time is therefore, not inordinate hence the extension of time will be granted on condition that the notice of appeal will be filed within 21 days of this order.
 5. On the issue of stay of execution, this will not be granted for the reason that the judgment to be appeal from merely ordered the respondent to recognize the claimant union for purposes of collective bargaining. Recognition is a transient phenomenon and if as claimed the respondent does not have sufficient numbers to merit recognition it can invoke the provisions of Section 54(5) of the [Labour Relations Act](#) to terminate the recognition agreement.
 6. This court in its judgment sought to be appealed, simply found that the respondent/intended appellants failed to sufficiently prove that the staff allegedly included by the claimant as unionsable staff were actually in management. No prejudice would therefore be occasioned to the respondent if the stay order is not granted. This prayer is therefore declined.
 7. In conclusion the applicant is hereby granted leave to file a notice of appeal out of time. Such filing to be done within 21 days of this ruling.



8. The order for stay of execution is hereby declined.

It is so ordered.

DATED AT NAIROBI THIS 8TH DAY FEBRUARY, 2024

DELIVERED VIRTUALLY THIS 8TH DAY OF FEBRUARY, 2024

ABUODHA NELSON JORUM

JUDGE

