



**Jillo v Agricultural Finance Corporation (Cause 13 of 2019)
[2024] KEELRC 1418 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1418 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE 13 OF 2019
M MBARÚ, J
FEBRUARY 2, 2024**

BETWEEN

GALGALO JARSO JILLO CLAIMANT

AND

AGRICULTURAL FINANCE CORPORATION RESPONDENT

RULING

1. On 24 July 2023 the claimant filed his application seeking a review and or the setting aside orders of stay of judgment herein delivered on 17 March 2022.
2. On 30 October 2023 parties attended court and agreed to address the application by way of written submissions. Timelines were allocated for each party. A mention date was allocated for 30 January 2024 to confirm compliance.
3. The claimant as the applicant did not adhere to the court directions and only filed its written submissions on 29 January 2024. Such denied the respondent a fair chance to file its responses to the application. The lapse in attending as directed is not justified. The submissions filed out of time shall not be addressed.
4. The respondent did not attend court on 30 January 2024. The date was allocated in the presence of both parties.
5. The claimant's application is dated 20 July 2023 and premised on the provisions of Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 rule 1 of the *Civil Procedure rules* and is seeking to review, vary and/or set aside the order of stay of execution issued on 17 March 2022.
6. The application is supported by the claimant's affidavit and on the grounds that upon judgment herein on 25 November 2021 in his favour, the respondent filed application dated 3 January 2022 seeking stay. The application was heard and in the ruling delivered on 17 March 2022, the court allowed the



- respondent's application and further ordered for the provision of security in form of a bank guarantee acceptable by the court within 21 days' failure to which the stay would lapse.
7. The respondent deposited security as directed but has never preferred an appeal against the judgment since 25 November 2021. A period of one year has lapsed since the order of stay of execution was issued and no appeal has been served upon the claimant. This is interfering with the claimant's right to enjoy the fruits of the judgment that was delivered in his favour.
 8. The claimant avers in his affidavit that the period taken by the respondent without filing any appeal despite getting the order of stay of execution is clearly indicative of having lost interest in the matter. There is no good cause to justify the order of stay of execution pending appeal since 17 March 2022. The orders sought should issue by the court reviewing, varying or setting aside the orders of stay of execution herein.
 9. In reply, the respondent filed Grounds of Opposition that;
 1. The application is without merit and does not meet the grounds for the grant of the orders sought.
 2. The issues raised in the Notice of Motion are overtaken by events since the Appeal in the above matter being Malindi Court of Appeal No. E002 of 2023 (Agricultural Finance Corporation v Galgalo Jarso Jillo) was filed on 1st February 2023 and thereafter served upon the applicant.
 3. The application is frivolous and vexatious and the same should be dismissed with costs.
 10. From the claimant's application and affidavit, his case is that following judgment herein on 25 November 2021, the court allowed stay of execution through ruling delivered on 17 March 2022. This was to allow the respondent exercise its right of appeal against the judgment. To secure the judgment, the court ordered the respondent to provide security in form of a bank guarantee acceptable to the claimant, which was done and indeed, there exists such security deposit.
 11. In view of the lapse by the parties to file written submissions in time as directed by the court on 30 October 2023, the court on its motion has made a search at the Malindi Court of Appeal Civil Registry and established that the respondent filed Malindi Court of Appeal No. E002 of 2023 - Agricultural Finance Corporation v Galgalo Jarso Jillo which is pending hearing. The appeal was filed on 1st February 2023. The Court of Appeal invited parties for case conference on 20 November 2023. The matter was adjourned due to non-attendance by the parties.
 12. The Court of Appeal directed fresh dates be allocated at the registry.
 13. The purpose for the grant of stay of execution herein is addressed. This is to secure the appeal by the respondent. The appeal should be allowed to take its course. The claimant as a party to the appeal has the right to attend and seek for expedited hearing so as to secure his rights therefrom.
 14. For this court, upon judgment and the order allowing stay of execution pending the hearing and determination of the appeal, it stands functus officio. To order otherwise on the face of the appeal in Malindi Court of Appeal No. E002 of 2023 - Agricultural Finance Corporation v Galgalo Jarso Jillo would be an overreach outside its mandate.
 15. Accordingly, application dated 20 July 2023 is without merit. It is dismissed. Each party to bear own costs.

DELIVERED IN OPEN COURT AT MALINDI THIS 2 DAY OF FEBRUARY 2024.

M. MBARŪ



JUDGE

In the presence of:

Court Assistant: Nasra

..... and

