



Otiato v Gulf Energy Holding Limited (Employment and Labour Relations Cause E343 of 2020) [2024] KEELRC 729 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 729 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E343 OF 2020**

**MN NDUMA, J
MARCH 20, 2024**

BETWEEN

EVANS OTIATO CLAIMANT

AND

GULF ENERGY HOLDING LIMITED RESPONDENT

RULING

1. The applicant in the application dated 4/10/2023 seeks an order for stay of execution of the judgment by Justice Mathews N. Nduma delivered on 1/12/2022 pending the hearing and determination of appeal.
2. The application was filed on 9/10/2023 more than ten (10) months from the date of the judgment of the court and after delivery of a ruling in a bill of costs by Hon. Fredrick Nyamora on 12/9/2023.
3. The judgment sum is for Kshs. 888,599.01 and the bill was taxed at Kshs. 170,955/=.
4. The notice of appeal is dated 5/12/2022 a few days after judgment and a memorandum of appeal is dated 25/7/2013.
5. The applicant states that it has good prospects of success of the appeal. That the respondent is a reputable company and is able and willing to provide security for the decree and costs of the appeal. That the applicant will suffer irreparable loss if the application for the order for stay is not granted and the appeal is eventually successful
6. The application is opposed vide a replying affidavit of the claimant/ respondent who deposes that the judgment issued is in respect of salary arrears for the month of June 2022 in the sum of Kshs. 114,282.19; payment in lieu of leave days not paid in the sum of Kshs. 274,137.12 and two months compensation in the sum of Kshs. 500,180/=.



7. That the applicant has no arguable appeal. That the notice of appeal was only served on the respondent on 2/8/2023 despite judgement having been delivered on 1/12/2022. That the delay is inordinate.
8. That the applicant has not demonstrated that it would suffer irreparable loss if judgment is not stayed.
9. The applicant states that he earns a salary and also owns various properties and is not impecunious as alleged by the respondent. That in the unlikely event the appeal is successful, the respondent will fully reimburse the judgment sum.
10. That the respondent has not offered any security for the decree and costs. It is not sufficient for the applicant to state that it is a reputable company and it will comply with court order.
11. That the respondent is entitled to enjoy the fruits of his judgment.
12. That the application be dismissed with costs.
13. In *Halai and another v Thornton and Turpin (1965) Ltd* [1990] eKLR, at page 2, Court of Appeal held:-

“That the superior court’s discretion is fettered by three conditions. Firstly the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must of course be made without unreasonable delay.”

14. This application was filed more than 10 months after judgment was delivered. It is visited with unexplained inordinate delay. The applicant did not furnish the court with security for the decretal sum and costs of the appeal and thirdly, the applicant did not satisfy the court that it would suffer irreparable loss should the stay be not granted and the appeal is successful.
15. The respondent has demonstrated that he is not a man of straw and is entitled to enjoy the fruits of judgment pending the hearing and determination of the intended appeal.
16. In the final analysis, having considered all the depositions by the parties and the submissions filed thereof, the application lacks merit and is dismissed with costs.

DATED AT NAIROBI THIS 20TH DAY OF MARCH 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:-

Ms. Wamuyu for the respondent/applicant

Mr. Muli for claimant/respondent

Mr. Kemboi, Court Assistant

