



**West Kenya Sugar Company Limited v Ndombi (Appeal
E004 of 2024) [2024] KEELRC 701 (KLR) (18 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 701 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
APPEAL E004 OF 2024**

**JW KELI, J
MARCH 18, 2024**

BETWEEN
WEST KENYA SUGAR COMPANY LIMITED APPELLANT
AND
PETER ANDATI NDOMBI RESPONDENT

RULING

On the Notice of Motion application on stay of execution dated 5th March 2024

1. This Ruling determines the Appellant’s Notice of Motion dated 5th March 2024 and filed on the 7th March 2024. The Application was filed under Certificate of urgency of even date relying on the provisions of Article 48 and 50(1) of the Constitution of Kenya, Sections 1A, 1B, and 3B of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure Rules.
2. The Applicant seeks the following orders: -
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to Order a stay of execution of the judgment of Hon. Angeline Odawo dated 7th February 2024 in Kakamega CMELRC No.E009 of 2020: *Peter Andati Ndombi v West Kenya Sugar Company Limited* and or any consequential Decree l. and/or Orders pending the hearing of the Appellant’s appeal.
 - d. That the costs of this application do abide the outcome of the intended appeal.
3. The Applicant states that judgment was entered against the Claimant on 7th February 2024 and being dissatisfied with the Court’s Judgment, it filed the instant appeal.



4. The trial court granted a stay of 30 days which was expiring on 6th March 2024. That they are exposed to execution.
5. That at the hearing the respondent stated he was not employed and hence the appellant may not be able to recover the decretal monies if successful on appeal.
6. That the appeal had a high chance of success.
7. The application was served upon directions of the court for response. No response was filed and the Respondent did not attend.
8. The application was thus unopposed. Counsel for the Applicant informed the Court they had served and filed an affidavit of service.

Decision

9. The Court of Appeal has settled the principles for stay of execution in the case cited by Justice Ongudi in *MFI Document Solutions Ltd v Paretto Printing Works Limited* (2021) eKLR of *Butt -vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal gave guidance on how a Court should exercise discretion in an application for stay of execution and held that: -
 - “ 1. the power of the Court to grant or refusal an application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle is granting or reusing a stay is: If there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge’s discretion. (sic) (trial Court judgement).
 3. A judge should not refuse a stay if there is a good ground for granting it merely because in his opinion a better remedy may be available to the applicant at the end of the proceedings.
 4. The Court in exercising its powers under order XLI rule 4 (2) (b) of the civil procedure Rules can order security upon application by either party or on its own motion. Failure to put security of costs as ordered with cause the order for stay of execution to lapse”.
10. Applying the foregoing decision, I find that if the stay of execution is not granted pending the hearing and determination of the appeal the same may be rendered nugatory in the event the appellant is successful. There is a memorandum of appeal filed on 7th March 2024 which in my opinion raises triable issues and is not frivolous.
11. I grant Order a stay of execution of the judgment of Hon. Angeline Odawo dated 7th February 2024 in Kakamega CMELRC No.E009 of 2020: *Peter Andati Ndombi v West Kenya Sugar Company Limited* and/or any consequential Decree and Orders pending the hearing and determination of the Appellant’s appeal.
12. The Respondent is Hereby Ordered to deposit the entire decretal amount in this Court in 15 days of this Order failing which the Order of Stay so granted shall stand vacated.
13. No order as to Costs.



14. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18TH MARCH 2024.

J.W. KELI

JUDGE

In the presence of:-

Court Assistant: Lucy Macheso

Claimant:- Waweru

Respondent :Absent

