



REPUBLIC OF KENYA



KENYA LAW
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**Sidigu v Kolum & 5 others (Petition E034 of 2023)
[2024] KEELRC 600 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 600 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E034 OF 2023**

S RADIDO, J

MARCH 13, 2024

**IN THE MATTER OF CONTRAVENTION OF THE CONSTITUTION
OF KENYA CONTRARY TO ARTICLES 10, 19, 20, 22, 23, 27,
47, 50, 73 AND 159 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE EMPLOYMENT ACT

AND

IN THE MATTER OF CHEMELIL SUGAR COMPANY LTD

AND

**IN THE MATTER OF PROCEDURAL RECRUITMENT
OF CEO/MD CHEMELIL SUGAR COMPANY LTD**

AND

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS,
NATURAL JUSTICE, TRANSPARENCY AND FAIR LABOUR PRACTICES IN KENYA**

AND

**IN THE MATTER OF QUESTING THE APPLICATION OF CEO, CHEMELIL SUGAR
COMPANY LTD BY CHAIRMAN OF THE BOARD ENGINEER JOHN NYAMBOK**

AND

**CONCURRENCE LETTER FROM THE CHIEF
OF STAFF AND HEAD OF THE PUBLIC SERVICE**

AND

**THAT OF CABINET SECRETARY FOR AGRICULTURE,
MITHIKA LINTURI RESPECTIVELY FOR CONTRAVENING
THE LABOUR LAWS AND CONSTITUTIONAL PROVISION**



BETWEEN

MICHAEL SIDIGU PETITIONER

AND

MOSES KIPROP KOLUM 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

CHEMELIL SUGAR CO LTD 3RD RESPONDENT

**CHAIRMAN, BOARD OF DIRECTORS, CHEMELIL SUGAR CO
LTD 4TH RESPONDENT**

HON MITHIKA KINTURI, CS AGRICULTURE 5TH RESPONDENT

PUBLIC SERVICE COMMISSION 6TH RESPONDENT

RULING

1. In a judgment delivered on 7 February 2024, the Court issued an order of certiorari quashing the appointment of Moses Kiprop Kolum as the Managing Director of Chemelil Sugar Co Ltd (the company).
2. The company and Board were aggrieved with the judgment and on 8 February 2024, they filed a Notice of Appeal
3. Apart from the Notice of Appeal, the 2 Respondents filed an application seeking stay of execution on 13 February 2024.
4. The main grounds for the application were that the Court had exercised its discretion wrongly by declining to accept the withdrawal of the Petition before delivery of judgment and that the Court had put into consideration unsubstantiated evidence.
5. The Court directed the Respondents to serve the application, and the Court was told that service was effected through email on the Petitioner on 14 February 2024.
6. When the application came up for inter-partes hearing on 5 March 2024, the Petitioner denied service, but at the same time indicated that his phone had a problem during the interval.
7. The Court directed the Petitioner to file and serve a replying affidavit before end of 8 March 2024 ahead of oral submissions on 11 March 2024.
8. In the replying affidavit, the Petitioner asserted that the Court having found the contract given to the 1st Respondent illegal, the contract became a nullity and, therefore, there was nothing capable of being stayed.
9. The Petitioner also took the view that the Court retained the discretion to accept the withdrawal of the Petition and that if the Court was inclined to allow the application for stay, the Respondents should be ordered to deposit security for costs with the Court.
10. On 11 March 2024, the Petitioner though present online was unable to address the Court, probably due to technical challenges.



11. The Court, therefore, directed the parties to file and exchange written submissions ahead of Ruling today.
12. The 3rd and 4th Respondents filed their submissions on 11 March 2024 and the Petitioner on
13. The Respondents, relying on the authority of *James Wangalwa & another v Agnes Nakiaka Cheseto* (2012) eKLR urged that substantial loss would be occasioned to the company if a stay of execution order was not granted.
14. The Court has considered the Motion, affidavits and submissions.
15. The order sought by the 2 Respondents is discretionary and the parameters within which the Court should exercise the discretion have taken a well-trodden path.
16. One of the grounds raised by the 2 Respondents is that it was not open to the Court to disregard or decline to accept a Notice of Withdrawal which had been filed by the Petitioner and proceed to deliver a judgment.
17. The Respondents further contended that the Court took into consideration factual material (national identity card) which had not been proved.
18. The nature of the orders granted by the Court were to intervene in a time-bound contractual relationship. The contract may probably lapse before the Court of Appeal renders itself on the intended Appeal.
19. The harm or loss which may be occasioned to the 1st Respondent in the circumstances may not be capable of an effective remedy. It would be substantial loss.
20. Considering the foregoing, the Court will allow a stay of execution but for a limited time to enable the Respondents pursue their right of appeal before the Court of Appeal.

Orders

21. In light of the above the Court orders:
 - (i) A stay of execution of the judgment delivered on 7 February 2024 is allowed for a limited time of 12 months from the date of this Ruling.
22. Costs in the Cause

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 13TH DAY OF MARCH 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

Petitioner in person

For 1st Respondent Olel, Onyango, Ingutiah Advocates, LLP

For 3rd and 4th Respondents Otieno, Yogo, Ojuro & Co. Advocates

For 2nd and 5th Respondents Mr Felix Kajo, Senior Litigation Counsel, Office of the Hon Attorney General

For 6th Respondent Michael Maurice Ogosso, Principal Legal Counsel, Public Service Commission



