



Pelt Security Services Limited v Nyanumba (Employment and Labour Relations Appeal E004 of 2023) [2024] KEELRC 661 (KLR) (12 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 661 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E004 OF 2023**

HS WASILWA, J

MARCH 12, 2024

BETWEEN

PELT SECURITY SERVICES LIMITED APPELLANT

AND

SAMUEL NYANUMBA RESPONDENT

RULING

1. Before me for determination is the Appellant/ Applicants Notice of motion dated 26th September, 2023, brought pursuant to section 1A & 3A of the *Civil Procedure Act*, order 18 Rule 10 & Order 51 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law, seeking for the following orders; -
 1. Spent.
 2. That the Honourable court be pleased to grant interim stay of Judgement delivered on 23rd March, 2023 by the Honourable Principle Magistrates A. P Ndege sitting at Nakuru Magistrate Court in MCELRC Cause No. E065 of 2022; Samuel Nyanumba Vs Pelt Security Services Limited and the Respondent was awarded Kshs 716, 139.85 plus costs and interest.
 3. That there be stay of execution of the Judgement delivered on the 23rd March, 2023 and the resultant decree and all incidental orders entered herein be set aside pending the hearing and determination of this Application.
 4. That the Application be heard inter partes on such date and time as this Honourable Court may deem fit.
 5. That the costs of this Application abide the outcome of the Appeal.
2. The Application is premised on the grounds on the face of the Application and the supporting affidavit of Reuben Binayo, the Appellant's operation manager, sworn on the 26th September, 2023.



3. The Applicant herein is aggrieved by the judgement delivered ex parte by the Court on the 23rd March, 2023 and has since lodged an Appeal and subsequently filed a memorandum of Appeal on 4th April, 2023, which he states raises triable issues, with high chances of success and failure to stay the execution therein, the appeal stands to be rendered nugatory.
4. The Applicant avers that prior to delivery of the judgement on 17th March, 2023, the Applicant herein filed an application to be allowed to cross examine the claimant but the said application was mysteriously dismissed and thus the Applicant was driven out of the seat of justice unheard.
5. The affiant stated that the upon delivery of the judgement, the Respondents herein instructed MOCO Auctioneers who attempted to cart away with the Applicant's goods without following proper procedure of issuing proclamation notice.
6. The Applicant also stated that the Respondent is a man of straws who will be unable to repay the decretal sum if the Appeal succeeds, as such stay should issue.
7. He also stated that the Appellant is willing to deposit a bank guarantee as security for due performance. Further that the Application has been filed timeously and that no prejudice will be visited on the Respondent if stay is granted.
8. In the affidavit, the Affiant stated that judgement was delivered on 23rd March, 2023 by Hon A.P Ndege and on 24th March, 2024, they requested for copies of certified judgement and typed proceedings, which the Court is yet to issue to enable the Applicant prepare a record of Appeal.
9. He implored upon this court, based on the circumstances raised to allow the application for stay.
10. The Application is opposed by the Respondent who filed a replying affidavit deposed upon on 5th October, 2023 stating that the stay of execution order sought is a ploy to delay the realization of full industrial justice on his part.
11. He stated that the Application is dead on arrival as it does not consist of any substantive prayer for grant of stay of execution pending the hearing of the Appeal.
12. The Respondent stated that it has not been served with any memorandum of Appeal as such, he is not aware of existence of any Appeal in this matter. He also denied knowledge of the alleged application dated 17th March, 2023, which the Applicant stated was seeking to cross examine the claimant/ Respondent herein. Moreover, that the applicant has not annexed a copy of the ruling of the Application that was allegedly dismissed mysteriously.
13. The Respondent stated that contrary to the allegations by the Applicant, The Applicant was not denied audience rather that they ignored all hearing dates especially the hearing of 16th March, 2023 which was taken by mutual consent by the parties on the 25th August, 2022. Additionally, that the no explanation was given for the non-attendance.
14. He stated that no reasonable security has been offered for due performance. Nonetheless, that in the event this Court allows this Application then order for security by way of payment of half of the decretal sum to the claimant/ Respondent and deposit of the balance in Court or a deposit of the entire sum in Court. He rejected the security offered of bank guarantee.
15. The Respondent stated that the Application herein has been filed after a considerable and unexplained delay, since the Judgement was delivered on 23rd March, 2023, while the Application herein was filed on 26th September, 2023, a period of more than Six (6) Months.



16. The Respondent also stated that the Application herein has only been filed when execution proceedings began, despite the Applicant purporting to have filed an Appeal on 6th April, 2023, which Appeal in any case was never served upon the Respondent herein.
17. He stated that the Application lacks merit as it stands and therefore the Court should dismiss it.
18. The application placed before this court is for stay pending hearing and determination of this application. Beyond this application, it appears that the court arrives at a dead end without any further action.
19. The applicants have not sought any orders pending an appeal they have filed. It is therefore apparent from the pleadings that no orders can be granted beyond this application.
20. A party is held by their pleadings and this court can not amend the applicant's pleadings in this application.
21. Based on this understanding, there are no further orders of stay I can grant beyond this application.
22. The application lacks any feet to stand on and I find it unmerited and I dismiss it accordingly.
23. Execution may proceed.

RULING DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of: -

Mburu S.K for Respondent

Kwamboka for Appellant

Court Assistant - Fred

