



**Endmor Steel Millers Ltd v Kasembeli (Appeal E230 of 2023)
[2024] KEELRC 1155 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1155 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E230 OF 2023
DKN MARETE, J
APRIL 24, 2024**

BETWEEN

ENDMOR STEEL MILLERS LTD APPLICANT

AND

FRANKLINE KASEMBELI RESPONDENT

RULING

1. This is an application dated 15th September, 2023 where the applicant seeks the following order of court;
 1. That this application be certified as urgent and service be dispensed within the first instance.
 2. That the Honourable court be pleased to grant stay execution of the Ruling and/or all consequential Orders issued in Mavoko Emel No. 145 of 2019 *Frankline Kasembeli vs Endmor Steel Millers Limited* delivered on 31st October, 2023 by Honourable Barbara Ojoo pending the hearing and determination of the Application inter partes.
 3. That the Honourable court be pleased to grant and/or extend stay execution of the Ruling and/or all consequential Orders issued in Mavoko EMEL No. 145 OF 2019 *Franline Kasembeli vs Endmor Stell Millers Limited* delivered on 31st October, 2023 by Honourable Barbara Ojoo pending hearing and determination of the appeal lodged herein.
 4. That costs of this Application be provided for.
2. The Respondent in a Replying Affidavit sworn on 27th November, 2023 opposes the application. It is her case that the application is an abuse of the process of court and intended to delay justice in that the Applicant does bring out any circumstances that necessitate stay of execution as prayed.
3. Again, the Appellant/Applicant has failed to demonstrate whatsoever the substantial loss is likely to face in the event that no stay of execution is granted. She relies on authority of [James Wangalwa](#)



Another versus Agnes Naliaka Cheseto (2012) eKLR where the court on similar circumstances held as follows;

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process”.

4. The parties brought in the various submissions in support of their respective cases for and in opposition to the application.
5. This application boils down to the court’s discretionary power to grant or decline an application for stay of execution. On this, the applicant sought to rely on authority of *Halai And Another –vs- Thornton & Turpin (1963) LTD* [1990] KLR as follows;

“The High Court’s discretion to order stay of execution of its Order or Decree is fettered by three conditions, namely; - Sufficient Cause, substantial loss would ensue from a refusal to grant stay, the Applicant must furnish security, the application must be made without unreasonable delay.

6. In addition, the Applicant must demonstrate that the intended Appeal will be rendered nugatory if stay is not granted as was held in *Hassan Guyo Wakalo...vs...Straman EA Ltd* (2013) as follows;

“In addition, the Applicant must prove that if the orders sought are not granted and his Appeal eventually succeeds, then the same shall have been rendered nugatory.”

7. This is a simple application for stay of execution. We need not to belabour on the various authorities on the subject. This is an exhausted subject matter in the circumstances.
8. I am therefore inclined to allow this application with orders that the Applicant make and deposit of the decretal sum of Ksh.943,800.00 within 30 days of this ruling of court.

DELIVERED, DATED AND SIGNED THIS 24TH DAY OF APRIL 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Tuwei for Kirimi instructed by Kinyanjui, Kirimi & Company Advocates for the Applicant.
2. Mr. Ogot Odhiambo instructed by Lemmy Regau & Company Advocates for the Respondent.

