



Maina v Standard Group Limited (Employment and Labour Relations Cause 1922 of 2016) [2024] KEELRC 756 (KLR) (8 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 756 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1922 OF 2016**

**K OCHARO, J
APRIL 8, 2024**

BETWEEN

JULIUS PETER MAINA CLAIMANT

AND

STANDARD GROUP LIMITED RESPONDENT

RULING

1. Through a Notice of Motion Application dated 8th March 2024, expressed to be under the provisions of Order 42, Rule 6 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, the Respondent/Applicant seeks for a stay of execution of the decree herein pending appeal, with a consequential order that its motor vehicles registration Numbers KCH 303K and KDC 179S, that were seized and are in the possession of a Mamaco Auctioneers, be released.
2. The application is premised on the grounds obtaining on the face thereof, and the supporting affidavit sworn on the 8th March 2024 by Maureen Nasike, the Applicant's legal officer.
3. The application is vehemently resisted by the Claimant/Respondent vide a replying affidavit he swore on the 15th of March 2024.
4. The Applicant states that this court entered judgment in favour of the Claimant/Respondent on 13th July 2023, for a sum of KShs.3,528,032 together with costs and interest.
5. It further states, that aggrieved with the judgment of the court, it filed a notice of appeal on the 24th of July 2023, intimating its intention to challenge the entire judgment. Further, through a letter dated 24th July 2023, it requested a copy of proceedings and judgment for purposes of preparing and filing a record of appeal at the Court of Appeal.



6. On the 8th of March 2024, Auctioneers, (M/s Mamaco Auctioneers) visited its business premises and seized two motor vehicles registration numbers KCH 303K and KDC 179S. The latter motor vehicle is co-owned with NCBA Bank Kenya PLC.
7. The Applicant contends that prior to the seizure, the Auctioneers had not served it with a proclamation notice on the two motor vehicles or any other of its properties.
8. It is further contended that as the Applicant has initiated an appeal against the judgment herein, it shall be just that it be allowed to pursue the appeal, which is as of right, without any hardship of having its assets seized in execution of the decree.
9. The Applicant asserts that the Claimant/Decree Holder is a man of no known means, and if execution is allowed to continue it shall suffer a substantial loss. The appeal shall be rendered nugatory.
10. The Applicant further states that it is ready and willing to adhere to any order that this court shall be pleased to make as regards the provision of security for the performance of the decree herein.
11. In opposing the application, the Claimant/Respondent states that the application herein has been lodged eight (8) months after the Court's judgment. The delay is inordinate and inexcusable.
12. Further, the taxation of his party and party bill of costs was done with the knowledge and participation of the Applicant's Counsel.
13. After the taxation, the court issued a decree and subsequently warrants of attachment, the basis upon which Mamaco Auctioneers proclaimed and attached the Applicant's motor vehicles, registration numbers KCH 303K, and KDC 179S.
14. The Claimant/Respondent asserts that contrary to the allegation by the Applicant/Judgment debtor that he is a man of no means, he is currently employed by Conversion Africa Kenya as its Chief Executive Officer earning a basic salary of KShs.920,028 per month.
15. He further asserts, that he owns many properties, pieces of land, and a motor vehicle. One of the pieces of land (plot BB36) in Kahawa West Estate has rental houses thereon which earns him more than KShs.304,000 per month.
16. Lastly, the Applicant has not annexed a draft memorandum of appeal from which this court can discern whether or not the intended appeal has a chance(s) of success.

The Applicant's submissions

17. Counsel for the Applicant/Judgment-Debtor identifies three issues for determination, thus, whether the application is merited, whether the application was made in good time; whether the appeal will be rendered nugatory were the prayers in this application not to be granted.
18. This court is urged to consider the fact that the Applicant filed a Notice of Appeal within time and sought for typed copies of the proceedings timeously, and conclude that truly there is an impending appeal.
19. The Claimant being a man of no known means, if the appeal to the Court of Appeal succeeds with the consequence that he is called upon to refund the sum of the decree, it may be difficult for the Applicant/Judgment debtor to recover the same.
20. The Respondent's Counsel argues that there is no guarantee that in the event the appeal succeeds. The Claimant/Respondent will still be in employment and the properties he mentions in his affidavit will still be in his name.



21. Addressing the alleged delay in lodging the instant application, the Applicant argues that the taxation of the Party and Party costs herein was done on 8th February 2024. The application was filed barely months after the taxation and issuance of the certificate of costs thereof.
22. The Applicant's contention that the seizure of the two motor vehicles was not preceded with a proclamation, has not been rebutted by the Claimant/Respondent. Consequently, it can be safely concluded that the attachment of the vehicles was not procedural. The court should lift the attachment.
23. It is lastly submitted that this court should exercise its discretion in favour of the Applicant so that its appeal is not prevented. To buttress this submission reliance is placed on the decision in the case of *Buttv Rent Restriction Tribunal (1982)* eKLR 417.

The Claimant's submissions

24. Counsel for the Claimant/Respondent submits that Rule 32 of the Employment and Labour Relation Court (Procedure) Rules 2016 imports applicability of the provisions of Order 42 Rule 6 of the [Civil Procedure Rules](#), into matters execution of the decrees of this court.
25. Order 42 Rule 6 set out conditions that a Judgment-Debtor must meet for him to secure orders of stay of execution pending appeal, thus, the application for stay has been lodged without undue delay, substantial loss shall be suffered if a stay is not made, and the Applicant has given security that may satisfy the decree.
26. It is further argued that there is no doubt that the application was filed eight (8) months, after the date of the judgment herein. The delay has not been explained by the Applicant at all. The delay was inordinate. To bolster his submission, as regards the need there was for the Applicant to explain the delay, and that the 8-month period was an inordinate delay, Counsel has placed reliance on the cases of [MNV v LNN](#) Civil Appeal No. 3 of 2019 – Nyahururu High Court and [Peter Maosa Nyangauw National Bank of Kenya & Another](#) (2021) eKLR.
27. The Applicant did not require a copy of the decree or proceedings to apply for a stay of execution pending appeal. Even after filing the notice of appeal and requesting for typed proceedings, the Applicant did not do anything to follow up on the proceedings, judgment and decree.
28. It is further submitted that an applicant seeking a stay of execution must establish that he or she would suffer a substantial loss to attract a favourable exercise of the court's discretion in respect of his or her application. In the instant matter, the Applicant alleged that the Claimant/Respondent is a man of straw with no known means. However, the allegation was duly discounted by the Decree-Holder. He has sufficiently demonstrated that he is a man of means and capable of refunding the decretal sum if the intended appeal were to succeed with the consequence of him being called upon to refund the sum. Other than the speculation, there is no evidence that the Applicant has placed forth to demonstrate the Decree-Holder's inability to refund. There can be no basis for a grant of the stay order. To support these submissions, Counsel cites the holding by Platt JA in [Kenya Shell Limited v Benjamin Kanga Kibiru & Another](#) (1922-88) eKLR 1018, at 1022, and Gachuhi Ag JA at page 1023, thus;

“It is not sufficient merely stating that the sum of KShs.201,380.00 is a lot of money and the applicant would suffer loss if the money is paid.

What sort of loss would this be?

In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that the status quo should



remain as it were before judgment. What assurance can there be of the appeal succeeding? On the other hand, granting the stay would be denying a successful litigant the fruits of his judgment. The applicant has not given to the court sufficient material to enable it to exercise its discretion in granting the order of stay.

On my part, I cannot find possible evidence to persuade me to grant the order prayed for. It is unfortunate that the High Court passed remarks that may have annoyed the applicant but that by itself would not be sufficient reason to grant the stay. I too would dismiss the application.”

Analysis and Determination

29. The prime ground upon which the Applicant’s application is sought is that if the Claimant/Decree holder is allowed to proceed to conclude the already commenced execution process, the intended appeal will be rendered nugatory because as I understand the Applicant if the decretal sum is paid over, it will not be able to recover the same from the Claimant/Respondent at a later date if the appeal is successful. In support of this contention, the Applicant described the Claimant/Respondent as a footloose person, with no known means. In my understanding, a footloose person is one, who can travel freely and do as he pleases due to a lack of responsibilities or commitments. Despite characterizing the Claimant/Respondent as such, the Applicant has not placed before this court sufficient or any material from which it can be discerned that indeed the Claimant fits in the characterization.
30. The Claimant/Decree holder vehemently asserted, and placed material before this court to prove, that, he is a man of means and capable of refunding the sums of the decree should it become imperative. His contention that he is, currently serving as a CEO earning Kshs.920,028 monthly and, owner of the parcels of land whose titles are annexed to the answering affidavit, has not been challenged and rebutted by the Applicant.
31. As a result, I am not persuaded that there is a justification to hold that there is a likelihood that the Claimant/Decree holder will not repay the decretal sum if the intended appeal succeeds therefore rendering it nugatory and/ or occasioning substantial loss to the Applicant/Judgment Debtor.
32. The foregoing conclusion is made in cognizance of the proposition that if it is shown that execution of enforcement of a decree or order as the case may be, would render a proposed appeal nugatory, a stay can properly be given. However, as Hanncox JA stated in the Kenya Shellv Keruga, case (supra) there is a parallel proposition that is equally important, a litigant if successful should not be deprived of the fruits of a judgment in his favour without just cause.
33. Order 42 commands that an application for a stay of execution should be lodged without undue delay. The court notes that the application herein was filed almost 8 (eight) months after the date of the judgment herein that the Applicant intends to assail by way of an appeal. No doubt there was a delay in filing the application. The delay needed to be explained. This the Applicant did not do.
34. As a result of the foregoing premises, I find that the Applicant has not satisfactorily explained the delay in bringing up this application. I find the delay was inordinate. Further, the Respondent has not demonstrated that it will suffer substantial loss if the orders sought herein are not granted. Consequently, I find the application herein without merit. It is hereby dismissed with costs.

READ, DELIVERED AND SIGNED THIS 8TH DAY OF APRIL, 2024.

OCHARO, KEBIRA.

JUDGE



In the presence of:

Mr. Wepoh for Applicant

Mr. Chege for Claimant

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

