



Simatei v Teachers Service Commission (Employment and Labour Relations Appeal E024 of 2022) [2024] KEELRC 1330 (KLR) (24 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1330 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E024 OF 2022**

MA ONYANGO, J

MAY 24, 2024

BETWEEN

ABRAHAM K. SIMATEI APPLICANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The instant application dated 13th October 2023 and filed in court on the same date has been filed by the Respondent herein. It seeks for orders that there be interim orders of stay of execution and/or further execution of the decree herein pending the hearing and determination of the intended appeal to the Court of Appeal.
2. The grounds in support of the application are set out at the foot thereof namely: that on 19th January 2023, this court delivered its judgment allowing the Appellant's/Respondent's appeal with costs thereby substituting the decree of the lower court entering judgment against the Appellant in favor of the Respondents with costs with an order dismissing the suit with costs; that the Applicant being aggrieved with the said judgment filed Notice of Appeal on 3rd February 2023 intending to appeal against the whole of the said decision; that the Respondent has threatened to execute the decree of this court which threat if made good will only render the appeal by the Applicant nugatory and infringe on his right to be heard on appeal; that the Appellant has fixed its Bill of costs for taxation on various occasions hence hindering the typing of proceedings for purposes of preparing record of Appeal; that the Respondent has on several occasions written reminders on the typed proceedings and that unless the court grants the orders sought, the Respondent stands to suffer substantial loss.
3. When the application was in court on 18th October 2023 for directions, the Appellant was directed to file its response within 14 days. It appears the Appellant did not file any response.



4. On 6th November 2023, the court directed that the application to be canvassed by way of written submissions. Neither of the parties filed the submissions. I have noted that when the application was in court for mention on 5th March 2024 to confirm filing of submissions, Counsel for the Applicant, Mr. Mukhabane alleged that the court has directed on 6th November 2023 that parties should not file submissions. That is not the correct position.
5. I will now proceed to deal with the application.
6. Order 42 rule 6 of the *Civil Procedure Rules* provides as follows:
 - i. “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - ii. (2) No order for stay of execution shall be made under sub rule (1) unless-
 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
7. The first step is an examination as to whether the applicant has filed an appeal. For the purposes of Order 42 Rule 2 and rule 4 I find that there is a notice of appeal filed on 3rd February 2023.
8. Second is whether the Applicant would suffer substantial loss. Although the suit relates to the Applicant’s employment, the stay in respect of which this application is filed is on costs of the appeal. The Appellant being a State organization who cannot fail to refund costs should the appeal succeed, no substantial loss would be suffered by the Applicant by not granting the orders sought in the application.
9. On whether the application was brought timeously, the court notes that judgment in this suit was delivered on 19th January 2023. The instant application was filed on 13th October 2023, a period of more than 9 months later. No attempt whatsoever has been made to justify or explain the said delay.
10. The applicant has further not offered any security. Order 42 Rule 6 gives this court the mandate to order for deposit of such security for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant where no security has been offered by an Applicant.
11. The three essential conditions for grant of stay of execution that is: the presence of an appeal, the timeous filing of the application, the proof of substantial loss, must be established for the court to grant the orders sought.
12. The scale therefore balances against granting the orders of stay of execution. It is for these reasons that the application fails.
13. Consequently, the application dated 13th October 2023 is found to be unmeritorious and is hereby dismissed. There shall be no orders as to costs.



DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 24TH DAY OF MAY, 2024

MAUREEN ONYANGO

JUDGE

