



Wanjira v Computer Learning Centre (Employment and Labour Relations Cause 767 of 2019) [2024] KEELRC 1271 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1271 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 767 OF 2019**

MN NDUMA, J

MAY 23, 2024

BETWEEN

CHRISTINE WANJIRA CLAIMANT

AND

COMPUTER LEARNING CENTRE RESPONDENT

RULING

- 1 The respondent/applicant in the Notice of Motion application dated 17/11/2023 prays for an order in the following terms:-
 1. Spent
 2. Spent
 3. THAT pending the hearing and determination of the respondent's intended appeal against the judgment delivered herein on 12th October 2023 an order for stay of execution be and is hereby issued staying execution of the said judgment and all consequential orders thereof.
 4. THAT the costs of this application be provided for.
- 2 The facts set out by the applicant are that judgment was delivered on 12/10/2023 in which the court awarded the claimant Kshs. 3,000,000/= together with interest at court rates from date of judgment till payment in full. The court granted 30 days stay on the date of judgment which lapsed on 12/11/2023.
- 3 The applicant intends to appeal the judgment of the court and has filed a notice of appeal.
- 4 The applicant seeks stay of execution pending appeal. That the appeal has prospects of success. That the applicant would suffer substantial loss if a stay of execution is not granted. That the applicant is willing to abide by any favorable condition set by the court upon grant of stay orders.



- 5 The application is opposed by the claimant/respondent stating that the applicant has not satisfied the requirements for stay of execution by offering security for judgment debt and costs, demonstrating that it is likely to suffer substantial loss if stay of execution is not granted and by demonstrating that it has good prospects of success in its appeal.
- 6 The court was referred to order 42 Rule 6(2) of the *Civil Procedure Rules*, 2010 which sets out the conditions necessary for grant of stay of execution pending appeal in the following terms: -
- (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 orders as may ultimately be binding on him has been given by the applicant.
- 7 The court was also referred to the decision in *Butt versus Rent Restriction Tribunal* [1979] eKLR, in which the Court of Appeal per C. B. Madan, Miller and Potter JJA stated: -
- If there is no other eventual hindrance, a stay ought to be granted so that an appeal, if successful may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings. It is the discretion of the court to grant or refuse a stay but what was to be judged in every case is whether there are or no particular circumstances in the case to make an order staying execution.
- It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal if successful from being nugatory...”
- 8 In the present matter the application was brought on 17/11/2023 after the judgment was delivered on 12/10/2023. The application is not visited by inordinate delay. The decretal sum is substantial and the respondent is likely to suffer substantial harm if the stay of execution is not granted and the appeal is successful in the end.
- 9 The court considers it appropriate to stay execution of the judgment of the court delivered on 12/10/2023 on condition that the decretal sum is deposited by the applicant in a joint interest earning account in the name of the advocates for both parties within 30 days of its ruling.
- 10 In the event the applicant fails to deposit the decretal sum within 30 days as directed herein above, the order for stay of execution shall lapse and execution of the decree to follow.

DATED AT NAIROBI THIS 23RD DAY OF MAY, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Nyachoti for respondent/applicant

Mr. Wesonga for claimant/applicant

Mr. Kemboi, Court Assistant

