



**Kibos Sugar & Allied Industries Ltd v Amuma (Appeal
E011 of 2024) [2024] KEELRC 1589 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E011 OF 2024
S RADIDO, J
JUNE 26, 2024**

**BETWEEN
KIBOS SUGAR & ALLIED INDUSTRIES LTD APPELLANT
AND
CATHERINE AKINYI AMUMA RESPONDENT**

RULING

(The Appellant Kibos Sugar & Allied Industries Ltd (Original Respondent) being aggrieved and dissatisfied with the decision, judgment, and orders made on 4th April 2024 by the Learned Trial Magistrate Hon Shimenga in Kisumu CMC ELRC Cause No. 5 of 2019, Catherine Akinyi Amuma v Kibos Sugar & Allied Industries Ltd hereby prefers an Appeal to this Honourable Court)

1. For determination is a Motion dated 23 April 2024, by Kibos Sugar & Allied Industries Ltd (the applicant) seeking orders:
 - ((i) spent
 - ((ii) spent
 - ((iii) Pending the hearing and determination of this Appeal, there be a stay of execution of the decree in CMC ELRC No. 5 of 2019, Kibos Sugar & Allied Industries Ltd v Catherine Akinyi Amuma.
 - ((iv) That the costs of this application abide the Appeal.
2. When the Motion was placed before the Court on 25 April 2024, it granted an ex-parte interim stay of execution on the condition that the decretal sum is deposited in Court before 30 April 2024. Inter partes hearing was scheduled for 16 May 2024.
3. Catherine Akinyi Amuma (the Respondent) filed a replying affidavit on 14 May 2024.



4. On 16 May 2024, the Court directed the parties to file and exchange submissions.
5. The applicant's submissions were not on record by the agreed timeline (should have been filed and served before 23 May 2024). The Respondent filed her submissions on 31 May 2024.
6. The Court has considered the Motion, affidavits, and submissions on record.
7. The applicant's advocate asserted in support of the application that judgment was delivered on 22 November 2019, and that he was instructed to appeal on or around 4 April 2024; the intended appeal was arguable and had a high chance of success; the applicant was ready to provide security for due performance of the decree; the application had been made without undue delay; the applicant was likely to suffer substantial loss if a stay was not granted and that it was in the interest of justice to grant an order of stay.
8. In opposing the Motion, the Respondent contended that the applicant had failed to file a response to the primary suit despite service of Summons and pleadings and the Cause proceeded undefended and judgment was delivered on 22 November 2019; that the applicant sought to have the judgment set aside and a consent was reached on 22 July 2020 that the Cause be re-opened, the applicant files a Response and pays thrown away costs within 30 days; that the applicant did not comply with the terms of the consent and, therefore, the judgment remained executable; the applicant only paid the thrown away costs in April 2024 and that the Motion did not meet the threshold for grant of stay of execution.
9. The Court can make the following determinations.
10. One, the Court granted the applicant an ex-parte interim stay of execution on a condition on 25 April 2024. The applicant did not comply with the condition and no explanation whatsoever has been tendered for the failure.
11. Two, the judgment/decree sought to be stayed was delivered on 22 November 2019. The instant Motion seeking stay of execution was lodged in Court on 24 April 2024, over 4 years post-judgment.
12. The applicant has not even attempted to offer an explanation as to why it took over 4 years to move the Court to stay execution. The Court finds inordinate and unexplained delay.
13. Three, the applicant did not disclose the legal nexus between the Learned Magistrate's orders of 4 April 2024 and the execution of the judgment of 22 November 2019.
14. It is instructive that copies of the decisions were not placed before this Court to put them in context
15. Lastly, the applicant has not suggested that the Respondent is a person of straw who is unlikely to refund the decretal amount if execution proceeds and eventually the Appeal succeeds.
16. The applicant was seeking an exercise of the Court's discretion. It has miserably failed to satisfy the principles for the exercise of the Court's judicial discretion in its favour.



Orders

17. Flowing from the above, the Motion dated 23 April 2024 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 26TH DAY OF JUNE 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For applicant Onsongo & Co. Advocates

For Respondent Mwakio, Kirwa & Co. Advocates

Court Assistant Chemwolo

