



**Githinji v Elsamere Conservation Centre (Employment and Labour Relations Appeal E032 of 2023) [2024] KEELRC 1604 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1604 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E032 OF 2023**

**HS WASILWA, J  
JUNE 26, 2024**

**BETWEEN**

**WILSON GIKARIA GITHINJI ..... CLAIMANT**

**AND**

**ELSAMERE CONSERVATION CENTRE ..... RESPONDENT**

**RULING**

1. This Ruling is in respect of the Respondent/ Applicant notice of motion dated 9<sup>th</sup> may, 2024, filed pursuant to Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all enabling Provisions of the Law, seeking for the following Orders; -
  1. Spent.
  2. That pending the hearing and determination of this application inter parties, this Honourable Court do grant a stay of execution of the judgement delivered on the 30<sup>th</sup> of April, 2024 and all the consequential orders arising thereof.
  3. That consequential to prayer 2 above, this Honourable Court be pleased to make an order for stay of execution of the judgement delivered on the 30<sup>th</sup> of April, 2024 and all the consequential orders arising thereof pending the hearing and determination of the Applicant's appeal herein.
  4. That this Honourable Court be pleased to make any further orders as it may deem just and reasonable.
  5. That the Costs of this application be provided for.
2. The Application is based on the grounds on the face of the application and the supporting affidavit sworn on 9<sup>th</sup> May, 2024, by David Ndung'u, the manager of the Applicant.



3. In the affidavit, the affiant stated that the Applicant being aggrieved by the judgement of this Honorable court delivered on 30<sup>th</sup> April, 2024, has lodged a Notice of Appeal against it and wrote a letter dated 7<sup>th</sup> May, 2024 requesting for certified copies of the proceedings.
4. He stated that the Applicant has an arguable appeal with high chances of success and unless stay is granted the Appeal will be rendered nugatory.
5. Further that the Applicant stands to suffer substantial loss and irreparable prejudice, loss and damage if the orders for stay of execution pending the hearing and determination of this application and the intended appeal are not issued urgently.
6. He stated that the Applicant is willing and ready to comply with any terms that may be imposed by this Honourable court conditional to the order of stay being granted.
7. He added that it is in the best interest of justice that the applicant is afforded an opportunity to exercise its right of appeal and unless stay of execution is granted, the Respondent is likely to levy execution of the impugned judgment against the Respondent rendering its Appeal nugatory.
8. He avers that the Application has been brought timeously and made with utmost good faith.
9. The Application herein was heard orally on 3<sup>rd</sup> June, 2024, where Gatei Advocate acting for the Applicant submitted that it is willing to deposit the entire decretal sum in Court as security for due performance. Githinji Advocate, acting for the Respondent, urged this Court to order for half of the decretal sum to be paid to the Respondent and the other half be deposited in Court.
10. Therefore, that the parties agreed for the stay of execution to be granted, save that they did not agree on the conditions of stay of execution.
11. I have examined all the averments herein. The Respondent didn't file any response to this application despite service.
12. The applicant seeks stay and is willing to abide by conditions that may be set by this court including depositing the entire decretal sum in court.
13. The applicant has already filed a Notice of Appeal and if the stay is not granted, the substratum of the appeal may be rendered nugatory.
14. I therefore exercise my discretion and allow stay on the grounds that the Applicant deposits the entire decretal sum in court within 30 days from the date of this order in default execution may proceed. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JUNE, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of: -

Barmao holding brief Muigai- Gatei for Respondent/Applicant

Claimant – Absent

Court Assistant - Fred

