



**Bahwan Muslim Academy v Njeri (Appeal E061 of 2024)  
[2024] KEELRC 1564 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1564 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E061 OF 2024**

**M MBARŪ, J  
JUNE 20, 2024**

**BETWEEN**

**BAHWAN MUSLIM ACADEMY ..... APPELLANT**

**AND**

**RUTH NJERI ..... RESPONDENT**

**RULING**

1. The appellant filed an application dated 24 April 2024 under the provisions of Order 42 rule 6(2) and Order 22 rule 22 of the [Civil Procedure Rules](#) seeking orders;
  1. Spent.
  2. The court be pleased to issue an Order of interim stay of execution pending the hearing interparty of this application.
  3. This court be pleased to issue an Order setting aside the judgment delivered on 14 March 2024 pending the hearing and determination of this appeal.
  4. Costs of this application be provided for.
2. The application is supported by the affidavit of Omar M.S. Lali on the grounds that;
  1. This court delivered judgment on 14 March 2024 in favour of the claimant against the respondent;
  2. The applicant/appellant herein is greatly aggrieved by the judgment and has lodged an appeal within 30 days upon learning the foregoing;
  3. The appeal has extremely high chances of success because the respondent was awarded exorbitant amounts.



4. The appeal now faces the imminent risk of being attacked by auctioneers in the execution of the judgment.
5. If the Order is not issued then the appellant's appeal shall be rendered nugatory.
6. That it is in the interests of justice that this application be allowed as prayed.
3. In his Affidavit, Lali aver that the lower court delivered judgment in CMCC ELRC No.671 of 2022 on 14 March 2024 in favour of the respondent against the appellant and being aggrieved filed this appeal. The appeal has a high chance of success and unless the order of stay is issued the appeal will be rendered nugatory.
4. In reply, the respondent filed her Replying Affidavit and aver that the Supporting Affidavit in support of the application herein is sworn by a busybody and without the competence or authority of the appellant and should be expunged from the record. The deponent in paragraph (1) indicates that he is the appellant but in court is Bahwan Muslim Academy. The deponent was never a party in the proceedings before the lower court. In paragraph 4 the deponent aver that the affidavit is in support of a judgment delivered in CMCC ELRC No.671 of 2022 but the suit referred to here is MCELRC No.E168 of 2023 – Ruth Njeri v Bahwan Muslim Academy.
5. The applicant has not satisfied the decretal amount and has not shown any willingness to satisfy the same if such a condition were to be granted. The conditions required under Order 42 rule 6 have not been satisfied. The respondent is financially stable and able to satisfy the judgment upon appeal and in the interests of justice, the application by the appellant should be dismissed with costs.
6. Parties attended and the appellant applied to rely on the filed application and affidavit. The respondent filed written submissions and relied on the same together with the Replying Affidavit.
7. These are analysed and the substantive issue for the court to address is the appellant's prayer/order seeking an Order setting aside judgment delivered on 14 March 2024 pending the hearing and determination of this appeal.
8. The appeal herein relates to a judgment delivered on 14 March 2024 by the trial court in Mombasa MCELRC No.E168 of 2023 – Ruth Njeri v Bahwan Muslim Academy. As correctly pointed out by the respondent herein, the instant application is supported by the Supporting Affidavit of Lali, a person not identified as to what position he holds with the appellant and his case relates to a judgment delivered in CMCC No.671 of 2022.
9. These are different suits.
10. This court has not delivered any judgment herein capable of being set aside as sought in the orders that - an Order setting aside judgment delivered on 14 March 2024 pending the hearing and determination of this appeal.
11. This order cannot be issued herein.
12. The orders sought pending the interpartes hearing of the application - The court be pleased to issue an Order of interim stay of execution pending the hearing interparty of this application – are spent. These were sought to allow parties to attend and be heard on the main issue, which is couched as an Order setting aside judgment delivered on 14 March 2024 pending the hearing and determination of this appeal.
13. The appellant has not done a tidy job of the instant application. There was no attention and keenness to the details. The application to stay judgment in CMCC No.671 of 2022 and not MCELRC No.E168



of 2022 was noted by the respondent in the Replying Affidavit but the appellant did not take the cue to address it.

14. When invited to make oral submissions in court, the counsel opted to rely on the filed affidavits.
15. The result is that this is an abuse of the court process.
16. Orders sought as couched cannot be issued.
17. Accordingly, the application dated 24 April 2024 is without merit and is hereby dismissed. Costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 20TH DAY OF JUNE 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

