



**Nanji v Kamene (Cause E193 of 2023) [2024] KEELRC 2655 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2655 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E193 OF 2023**  
**DKN MARETE, J**  
**OCTOBER 30, 2024**

**BETWEEN**

**SAMEER NANJI ..... APPLICANT**

**AND**

**RACHAEL MUTANU KAMENE ..... RESPONDENT**

**RULING**

1. This is an application dated 5th October, 2023 and seeks a stay of execution and all proceedings to enforce the judgement and decree in Nairobi Magistrate's Court (Senior Principal Magistrate Hon. L.B Koech (Mrs) ELRC NO. E1852 OF 2021 delivered on 8th September, 2024.
2. The Applicant grounds this on the following; That he has an arguable appeal with high chances of success. That he is apprehensive that the Claimant will proceed to execute the judgment and decree of court to his detriment. That the thirty (30) days stay of execution granted at the lower court lapses on 8th October, 2023. That substantial and irreparable loss is likely to occur in default of stay. That he is ready and willing to offer security for cost and comply with any directions issued by this court. That the Appeal would be negated in lieu of stay of execution.
3. The Respondent in a replying affidavit sworn on 2nd October, 2023 opposes application and deems it an attempt to deny and or delay justice.
4. Further, the Respondent argues that the Applicant has not advanced any substantive and or fundamental reason for seeking stay of execution.
5. The party's written submission dated 18th January 2024 for the Appellant and 22nd December, 2023 for the Respondent are brief and reiterate and amplify their respective cases on the application.
6. Stay of execution is a discretionary remedy as espoused under Order 42 rule 6 of *Civil Procedure Act*. In the circumstances of this application, this court exercises this discretion in favour of the application.



This is because the Applicant has cited and ably argued the ground of substantial loss, security and sufficient justification for issue of a stay of execution.

7. I am therefore inclined to allow the application on the following conditions.
- i. The Appellant/Applicant is ordered to deposit the entire decretal amount in court within thirty (30) days from the date of this ruling.
  - ii. The Appellant/Applicant is ordered to file a record of appeal and move it within forty-five days of this ruling of court.
  - iii. In default of filing such record of appeal, this appeal shall stand abated.
  - iv. Mention on 16th December, 2024 at 900 hours for confirmation of compliance and directions of court.
  - v. Each parties shall bear their costs of the applications.

**DELIVERED, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF OCTOBER 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. M/s Muutu instructed by Desai, Sarvia & Pallan Advocates for the Appellant/Applicant.
2. Mr. Mwangi instructed by Kerongo Maatwa & Co. Advocates for the Respondent.

