



**Machayo v Jets Bar & Restaurant (Miscellaneous Case E105 of 2023)  
[2024] KEELRC 2650 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2650 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CASE E105 OF 2023  
DKN MARETE, J  
OCTOBER 30, 2024**

**BETWEEN**

**MILICENT ASEYO MACHAYO ..... APPLICANT**

**AND**

**JETS BAR & RESTAURANT ..... RESPONDENT**

**RULING**

1. The is an application dated 25th May, 2023 seeking orders of stay of execution of the judgment and or decree of court made on 19th May 2023 and all consequential orders pending hearing and determination of this appeal.
2. This is grounded on the fact that the applicant is unhappy with the impugned decision of court aforesaid and wishes to appeal against the said decision. The appeal raises triable issues with high chances of success and in any event, irreparable loss would ensue in the absence of an order of stay of execution.
3. The Respondent in a Replying Affidavit sworn on 21st June, 2023 faults the application and avers that the Appellant’s case at the magistrate’s court collapsed due her neglect in the prosecution of the same. The matter was listed for hearing severally, to wit, 15/2/2022, 15/6/2022, 11/10/2022 and 21/2/2023 but on all these days the Appellant/Respondent did not attend court to defend her case.
4. Again, the Appellant/Respondent was served with a mention notice on 22nd February, 2023 for purposes of filing submissions and taking a date of judgment which she again ignored.
5. She was further served with the Claimant/Respondent submissions on 8th March, 2023 together with a notice of entry of judgment all to no avail.



6. The Claimant/Respondent further faults this application on grounds that it lacks an attachment of a copy of judgment complained of or even a letter requesting for the judgment and proceedings. A memorandum of appeal is not annexed to the instant application.
7. Lastly, the application does not demonstrate or indicate that substantial loss would be occasioned in the event of non-issue of the order for stay of execution as sought.
8. The Applicant vide her written submission dated 16th October, 2023 submits a case where she is likely to suffer irreparable loss in the event of non-issue of stay of execution. This is because the Respondent does not in her replying affidavit demonstrate any capability of refund of the decretal amount should the appeal succeed.
9. Again, the Applicant submits that no inordinate delay has been occasioned on her part in bringing this application to the fore. Besides, she has offered to deposit half the decretal amount within forty (40) days or any other period agreeable to court in the event of a grant of a stay of execution.
10. This matter tilts in favour of the Applicant. Taking into account the dalliance of the Applicant in litigating the claim, a case for non-issue of stay of execution would arise. However, the reasons and circumstances leading to this anomaly are not explained by the Respondent. If these are upheld, it would be tantamount to visiting the ills of counsel on the litigant.
11. 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. The Respondent is ordered to serve the mention date on to the Appellant/Applicant in seven days.
  - vi. 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. Senda instructed by Osoro & Co. Advocate for the Applicant.
2. M/s Katanghai instructed by Rakoro & Co. Advocate for the Respondent.

