



Ndungu v Mount Kenya University (Employment and Labour Relations Cause 973 of 2018) [2024] KEELRC 2634 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2634 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 973 OF 2018
MN NDUMA, J
OCTOBER 24, 2024**

BETWEEN

LUCY WAMBUI NDUNGU CLAIMANT

AND

MOUNT KENYA UNIVERSITY RESPONDENT

RULING

1. This is an application for stay of execution of the judgment of the court dated 25/1/2024 pending the hearing and determination of intended appeal in terms of order 42 Rule 6(1) and (2) of [Civil Procedure Rules](#).
 1. Order 42 Rule 6(1) provides: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, -----“
 2. Order 42 Rule 6(2) provides: -

No order for stay of execution shall be made under subrule (1) unless-

 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant
2. The question for determination is whether the application has been filed without, unreasonable delay; whether security for due performance of the decree or orders has been given by the applicant and if



the applicant has demonstrated that it is likely to suffer substantial loss if the stay of execution is not granted.

3. The application is supported on grounds set out on the face of the notice of motion dated 19/2/2024 and buttressed in the supporting affidavit of the applicant asserting that it has satisfied the aforesaid requirements.
4. The respondent opposes the application in a replying affidavit dated 25/3/2024 stating that the applicant has not demonstrated 'good and sufficient cause' to want grant of the orders sought as set out in the case of *Hon. Attorney General versus The Law Society of Kenya and another* [2013] eKLR.
5. That mere assertion that failure to grant the orders would cause the applicant substantial loss without proper demonstration of the same does not suffice. That no evidence has been adduced to show how and why the applicant would suffer such loss. Furthermore, the applicant has not furnished any security for the due performance of the decree or orders of the court.
6. It has not been shown that the claimant/respondent would be unable to refund the decretal sum if the stay orders are not granted. A general statement that the claimant has not demonstrated means of such refund is an attempt to shift the burden of prove on the claimant/respondent which is not tenable.
7. That the claimant is entitled to enjoy the fruits of his judgment.
8. The court has considered the deposition and the submission by the parties and is of the finding that this is a proper case for the court to make the following orders: -
 - a. Stay of execution of the judgment /decree of the court dated 25/1/2024 is granted on condition that the respondent/applicant deposits the decretal sum in a joint interest earning account in the joint names of the advocates for the claimant and that for the respondent within 30 days of this ruling failing which the order for stay of execution of the judgment/decree will lapse and execution to follow.

DATED AT NAIROBI THIS 24TH DAY OF OCTOBER 2024

MATHEWS NDUMA

JUDGE

Appearance:

M/s. Maina for claimant/respondent

Mr. Kangethe for respondent/applicant

Mr. Kemboi – Court Assistant

