



**Kang'ethe v BIC East Africa Limited (Cause 772 of 2019)
[2024] KEELRC 13298 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13298 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 772 OF 2019
S RADIDO, J
NOVEMBER 28, 2024**

BETWEEN

PETER NJAU KANG'ETHE CLAIMANT

AND

BIC EAST AFRICA LIMITED RESPONDENT

RULING

1. For determination is a Motion dated 15 August 2024, by the Respondent seeking orders:
 - i. ...
 - ii. ...
 - iii. That the Honourable Court be pleased to issue a stay of execution of the judgment pending the hearing and determination of the intended Appeal.
 - iv. Costs of this application be provided for.
2. The main grounds in support of the Motion are that the Respondent being dissatisfied with the judgment delivered on 30 July 2024 had lodged an appeal with the Court of Appeal; the intended appeal was arguable; if the execution was allowed to proceed, the Respondent would suffer significant loss and was unlikely to recover the decretal sum if the execution were allowed to proceed; the Respondent was ready to furnish security for the due performance of the decree and the Claimant would not suffer any prejudice; the Motion had been filed without inordinate delay and it was in the interest of justice to grant the stay..
3. The Claimant filed a replying affidavit in opposition to the Motion on 17 September 2024, asserting that the application lacked merit; the intended appeal was a non-starter; the application was meant to keep him out of the fruits of the judgment and was in bad faith.



4. The Respondent filed its submissions on 30 October 2024 and the Claimant on 21 November 2024.
5. The Court has considered the Motion, affidavits and submissions.
6. The principles a Court faced with an application seeking a stay of execution pending appeal are derivatives of Order 42 Rule 6 of the Civil Procedure Rules and these are demonstration of substantial loss likely to be occasioned if a stay order is not granted; provision of security for the due performance of the decree and the invocation of the Court's jurisdiction without inordinate delay.
7. The Respondent moved the Court within 3 weeks of the judgment. The Claimant has not suggested that there was inordinate delay.
8. The Respondent has also shown a willingness to provide security for the due performance of the decree.
9. Regrettably, the Respondent has not demonstrated the substantial loss that may be occasioned to it if a stay order were not granted. The nearest the Respondent has appeared to suggest a loss is the deposition in paragraph 14 of the supporting affidavit that:
 14. The applicant is apprehensive that the Respondent may commence execution of the judgment any time from 15 August 2024. Therefore, if a stay of execution is not granted, the applicant's intended appeal will be rendered moot, hence a mere academic exercise, considering that the applicant is unlikely to recover the significant decretal sum plus the cost of the suit in the likely event that the Appeal is successful.
10. The issue of substantial loss was addressed by the High Court in *Joseph Gachie t/a Joska Metal Works v Simon Ndeti Muema* (2012) eKLR as follows:

It is not sufficient merely to state that the decretal amount is a lot of money and the applicant would suffer if the money is paid. In an application of this nature, the applicant should show the damages it will suffer if the order for stay is not granted since by granting a stay would mean that status quo should remain as it were before judgement and that would be denying a successful litigant of the fruits of judgment which should not be done if the applicant has not given to the court sufficient cause to enable it exercise its discretion in granting the order of stay.
11. In the humble view of this Court, the Respondent has not met the standard of demonstrating the substantial loss it would be occasioned if this Court declined to stay the execution of the judgment.

Orders

12. In light of the above, the Court declines to exercise its discretion in favour of the Respondent.
13. The Motion dated 15 August 2024 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 28TH DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Gatore, Jay & Co. Advocates

For Respondent Anjarwalla & Khanna LLP

Court Assistant Wangu

