



**Jaralama Medical Services v Guido (Miscellaneous Cause E297 of 2023)
[2024] KEELRC 13267 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13267 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E297 OF 2023
DKN MARETE, J
NOVEMBER 27, 2024**

BETWEEN

JARALAMA MEDICAL SERVICES APPLICANT

AND

JULIA GUIDO RESPONDENT

RULING

1. This is an application dated 18th December, 2023 and seeks the following orders of court;
 1. That the application be certified urgent and dispensed with in the first instance.
 2. That pending the inter parties hearing and determination of the application this Honourable court be pleased to grant stay of the execution of judgment.
 3. That the Honourable Court be pleased to grant the applicant leave to appeal out of time against the judgement delivered by Hon. G. OMODHO PM on 26th October, 2023 in Milimani Chief Magistrates Court MCELRC NO. E1265 OF 2022.
 4. That this Honourable Court to issue any further directions or orders as will further the cause of justice.
 5. That the cost of this application be provided for.
2. The application is grounded on the fact that after delivery of the judgment of court, the Respondent/ applicant would not readily obtain assistance in the court registry to access the said judgment.
3. There is no formal reply to this application. Instead, the Respondent relies on a Respondent's submissions dated 14th February, 2024.



4. The applicant buttresses her case by submitting that the delay in appealing was occasioned by confusion and misunderstanding in the court registry as explained in the supporting affidavit on the application. This is as follows;
 6. That I went back to the Registry on 22nd November, 2023 but I was told that the typing of the judgment was still not yet ready.
 7. That I went back again on 28th November, 2023 which was after thirty days were over that we were advised by the Registry to make application to the Registry for that judgment and pay Kshs.1000/= but before we did that the Applicant was served with a copy of the judgment by the Respondent attached to a demand letter on 5th December, 2023 which was beyond 30 days of appeal. A copy of the demand letter is attached.
5. There were issues with the typing and availability of the judgment of court thereby occasioning massive delay in its availability.
6. The Respondent did not file any reply to the application but opposed this in his written submissions dated 18th December, 2023. On this he seeks to rely on the authority of *habo agencies limited v Wilfred Odhiambo musingo* [2015] Eklr which emphasized the place of a litigant in diligently pursuing their matters in court. This is as follows;

...This court stated that it is not enough for a party in litigation to simply blame the advocate on record for all manner of transgressions in the conduct of litigation. Courts have always emphasized that the parties have a responsibility to show interest in and follow up their cases even when they are represented by counsel. In *Mwangi v Kariuki* (199) LLR 2632 (CAK) Shah JA ruled that mere inaction by counsel should only support a refusal to exercise its discretion if coupled with a litigant’s careless attitude.”
7. The Respondent further submits that the Applicant has not offered security which is a condition precedent to the issue of stay of execution as is required of Order 42 rule 2(b) of the Civil Procedure Rules. Further, the applicant does not demonstrate what substantial loss, if all, she would suffer if the order for stay of execution is not granted. The Application therefore is not merited and should be dismissed from onset.
8. An issue of stay of execution is a discretionary remedy of this court. It is the onus of the court to exercise and determine this discretion either way. In the circumstances of this case, the applicant has demonstrated a substantial case of difficulty in obtaining the judgment of the lower court to facilitate filing of this intended appeal. It would therefore be prudent to exercise this discretion in her favour.
9. I am therefore inclined to allow the application in the following terms;
 - i. An order of stay of execution be and is hereby issued staying the judgment of the lower court pending filing and determination of the intended appeal.
 - ii. The applicant is further granted leave to appeal out of time against the judgment delivered by Hon. G. OMODHO PM on 26th October, 2023 in Milimani Chief Magistrates Court MCELRC NO. E1265 of 2022.
 - iii. That the Respondent/Applicant is ordered to deposit the entire decretal amount in court within forty-five (45) days of this ruling of court.
 - iv. That the Respondent/Applicant is ordered to make, file and serve a record of appeal within forty-five (45) days of today.



v. Mention on 29th January, 2025 for confirmation of compliance and direction of court.

DELIVERED, DATED AND SIGNED THIS 27TH DAY OF NOVEMBER 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Njagi instructed by Kimani Kimondo & Company Advocate for the Applicant.

Mr Seda instructed by Orwa Seda & Company Advocate for the Respondent.

