



**Khayanje v Royal Tulip Canaan Nairobi Ltd (Cause 602 of 2019)  
[2024] KEELRC 13260 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13260 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 602 OF 2019  
S RADIDO, J  
NOVEMBER 14, 2024**

**BETWEEN**

**MICHAEL KHAYANJE ..... CLAIMANT**

**AND**

**ROYAL TULIP CANAAN NAIROBI LTD ..... RESPONDENT**

**RULING**

1. In a judgment delivered on 23 July 2024, the Court found that Royal Tulip Canaan Nairobi Ltd (the Respondent) was in breach of contract and had unfairly terminated the employment of Michael Khayanje (the Claimant). The Court awarded the Claimant Kshs 497,718/-.
2. The Respondent was aggrieved and it filed a Notice of Appeal on 5 August 2024.
3. On 27 September 2024, the Respondent filed a Motion seeking orders:
  - i. ...
  - ii. ...
  - iii. Pending the hearing and determination of the Appeal at the Court of Appeal, there be a stay of execution of the judgment delivered on 23<sup>rd</sup> July 2024 and any ensuing decree.
  - iv. The costs of this application be awarded to the applicant.
4. The primary grounds advanced by the Respondent in support of the Motion were that its intended Appeal raised triable issues and that the Claimant was a person of straw and there was no prospect of recovering the decretal sum if execution were to proceed and the Appeal succeeds.
5. When the Motion was placed before this Court on 7 October 2024, the parties indicated they were in negotiations.



6. The Court allowed the parties to conclude the negotiations and file a consent if agreement was reached.
7. No agreement was reached and on 15 October 2024, the Court directed that affidavits and submissions be filed and exchanged.
8. The Claimant filed on 17 October 2024, a replying affidavit sworn by his advocate. The Claimant stated in the affidavit that it did not oppose the application provided the Respondent was ordered to provide security by depositing the decretal sum in a joint interest-earning account in the name of the parties' advocates.
9. The Respondent filed a supplementary affidavit and its submissions on 8 November 2024 (should have been filed and served before 30 October 2024) and the Claimant on 8 November 2024.
10. The Court has considered the Motion, affidavits and submissions.
11. The principles a Court considering an application for stay of execution pending appeal should take into account are now well settled. The principles are derivatives of Order 42 Rule 6 of the Civil Procedure Rules.
12. The principles are that a party seeking stay of execution should demonstrate that substantial loss is likely to be occasioned if stay is not granted, the application has been made without inordinate delay and the provision of security for the due performance of the decree.
13. The Respondent filed the instant Motion on 27 September 2024. The judgment was delivered on 23 July 2024. The Notice of Appeal was filed on 5 August 2024. The Court finds the Motion was filed without inordinate delay.
14. The Respondent has asserted that the Claimant is a person of straw. The inference being that it may be occasioned substantial loss if execution proceeds, but no evidence to support the assertion was provided in the affidavit(s) on record.
15. The Claimant in his replying affidavit indicated he would not oppose the application on terms that the decretal sum was to be deposited into an interest-earning joint account.
16. The Respondent indicated that it was ready to provide security for the due performance of the decree. The parties could not agree on the security.

## **Orders**

17. In light of the above, the Court orders:
  - i. Stay of Execution pending the hearing and determination of Appeal is granted on condition that the decretal sum of Kshs 497,718/- is deposited into an interest-earning account in the joint names of the parties' advocates, CM Advocates LLP and Mmbone Osore & Associates Advocates on or before 22 November 2024.
  - ii. The parties to agree on the bank, in default the decretal sum to be deposited into Court on or before 27 November 2024.
18. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**RADIDO STEPHEN, MCIARB**



## **JUDGE**

Appearances

For Claimant Mmbone Osore & Associates Advocates

For Respondent CM Advocates LLP

Court Assistant Wangu

