



**Digital Security Services Limited v Angatia (Appeal E168 of 2024)
[2024] KEELRC 2733 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2733 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E168 OF 2024
M MBARÚ, J
NOVEMBER 7, 2024**

BETWEEN
DIGITAL SECURITY SERVICES LIMITED APPELLANT
AND
IBRAHIM MOI ANGATIA RESPONDENT

RULING

1. The appellant filed an application dated 23 August 2024 under the provisions of Orders 42 and 51 of the Civil Procedure Rules and seeking orders;

That a stay of the entire judgment and decree of Hon. Adika (SRM) in Mombasa Magistrates court ELRC No.E357 of 2023 delivered on 9 July 2024 be pending hearing and determination of this appeal.

Costs be borne by the respondent.
2. The application is supported by Sylvester Ottih, a director of the respondent, on the grounds that the appellant is aggrieved by the judgment delivered on 9 July 2023 in Mombasa CMELRC E357 of 2023 and has filed an appeal. On 22 August 2024, despite the respondent being served with the appeal, he instructed auctioneers to proclaim the appellant’s goods.
3. There is an arguable appeal with high chances of success. Unless the orders sought are issued, the appellant will suffer loss and damage, and the appeal will be rendered nugatory.
4. In reply, the respondent filed his Replying Affidavit and averred that upon judgment by the trial court on 9 July 2023, the respondent served the appellant with notice and draft decree on 11 July 2023 together with notice of intended execution. The Memorandum of Appeal was filed on 10 August 2024 without the appellant seeking orders of stay upon delivery of judgment despite being aware of the same.



5. The respondent avers that the appeal is unlikely to succeed and fails to raise arguable grounds. The respondent stands to suffer prejudice and his lawful right to be paid terminal dues following unlawful summary dismissal. He lost his source of income, and the continued delay only compounded his hardships. The application should be dismissed with costs as the appellant has failed to address the mandatory provisions of Order 42 Rule 6 of the *Civil Procedure Rules*.

Both parties attended and made oral submissions.

Determination

6. The appellant has since filed the Record of Appeal, and the parties have tried to agree on the pending application without success. The main issue of contention is the security deposit pending the hearing and determination of the appeal.
7. Indeed, an appeal from a trial court judgment is a right save; the respondent, too, has a legitimate right to enjoy the fruits of his judgment delivered on 9 July 2023.
8. To balance the rights of each party, Order 42 Rule 6 of the Civil Procedure Rules has given the conditions upon which an applicant should satisfy to enjoy the court's discretion and allow a stay of execution pending the hearing of the appeal.
9. The appeal herein was filed without delay, but the appellant has not demonstrated what substantial loss will be suffered if the decretal sum is paid to the respondent. More fundamentally, the appellant's negotiations to deposit 50% of the decretal sum in a joint interest account could not be resolved on the basis that the appellant is facing economic challenges.
10. Stay of execution should be based on the principles under Order 42 rule 6(1), which provides;
 - No order for stay of execution shall be made under sub-rule (1) unless-
 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay:
and
 - b. The applicant has given such security as the court orders for the due performance of such decree or orders as may ultimately be binding on him.
11. An applicant must satisfy the court that there will be a substantial loss unless the order of stay of execution is issued. The appellant has not gone into this. Also, security for the due performance of the decree is imperative. The appellant urged the court that it is facing financial challenges. Such information only supports the respondent's case that unless the trial court's judgment is secured, he will suffer great prejudice.
12. The bulk of the trial court's judgment related to payments for salary arrears, notice pay, underpayment of wages, and service pay.
13. In securing each party, it is only fair that the appellant should deposit the decretal sum in court within 14 days. This will preserve the subject of the appeal and allow the appellant a fair chance to be heard on its appeal.
14. Accordingly, the application dated 23 August 2024 is hereby allowed on the following conditions;
 - a. Stay of execution is hereby issued subject to the appellant depositing the decretal sum of Ksh.536,044.95 in court within 14 days closing on 25 November 2024;



- b. Failure to address as (a) above, the order of stay shall lapse;
- c. Costs to abide by the outcome of the appeal.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 7TH DAY OF NOVEMBER 2024.

M. MBARŪ

JUDGE

