



Mesembi v Paska Construction Limited (Employment and Labour Relations Cause 817 of 2019) [2024] KEELRC 13581 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13581 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 817 OF 2019
MN NDUMA, J
DECEMBER 19, 2024**

BETWEEN

CATHERINE MBINYA MUSEMBI CLAIMANT

AND

PASKA CONSTRUCTION LIMITED RESPONDENT

RULING

1. The applicant in the notice of motion application dated 25/4/2024, seeks an order of stay of execution of the Auctioneers Proclamation Notice dated 19/4/2024 pending the hearing and determination of the objector/applicant intended appeal.
2. The application is based on grounds 1 to 4 set out on the notice of motion and buttressed in the supporting affidavit of Mr. James Njiru a manager of the respondent/applicant which may be summarized that the respondent wishes to appeal the decision of the court delivered on 26/10/2023.
3. Further, the auctioneers intend to proclaim/attach and sell property belonging to the objector/applicant vide a proclamation notice dated 19/4/2025.
4. The applicant has attached a notice of appeal dated 8th November 2023 which copy bears no evidence of filing before court.

Replying affidavit

5. The claimant/respondent opposes the application vide a replying affidavit sworn to on 25/5/2024 stating that the applicant has not demonstrated that it stands to suffer substantial loss if the order for stay is not granted. That the applicant has not furnished the court with any security for the decretal sum and costs. That nothing of an appeal does not entitle the applicant to automatic stay of execution. That this is a discretionary power of the court upon proper persuasion on facts placed before court by the applicant.



6. That the bill of costs was not opposed by the applicant and was taxed at Kshs. 230,380/=.
7. That it is not shown that failure to get stay of execution would render the appeal nugatory. That the claimant/respondent is entitled to fruits of her judgment.
8. That the application be dismissed with costs.

Determination

9. The court upon a careful consideration is satisfied that the applicant has not adduced any evidence on affidavit that it stands to suffer substantial loss if stay of execution is not granted. The applicant has also not provided security for due performance of the decretal sum or costs of the suit.
10. Furthermore, it is not demonstrated that the intended appeal will be rendered nugatory if the order for stay is not granted.
11. The application was brought about seven (7) months from the date the judgment was delivered and only upon proclamation of goods in execution of the decretal sum.
12. The court is satisfied that the application lack merit and is dismissed with costs.

DATED AT NAIROBI THIS 19TH DAY OF DECEMBER 2024

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Maina for claimant/respondent

Mr. Adan & Co. Advocates for respondent/applicant

Mr. Kemboi – Court Assistant

