



**Suhufi Palace Hotel Limited v Makhoha (Miscellaneous Application
E107 of 2024) [2024] KEELRC 13476 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13476 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E107 OF 2024**

**M MBARŪ, J
DECEMBER 19, 2024**

BETWEEN
SUHUFU PALACE HOTEL LIMITED APPELLANT
AND
ABDALLA WEPO MAKHOHA RESPONDENT

RULING

1. The appellant filed an application dated 17 October 2024 seeking preservatory/conservatory orders for a stay of execution pending hearing directions. The application is supported by the affidavit of Japheth Asige Advocate for the appellant and on grounds that on 17 October 2024 the court directed the appellant to serve the respondent with the application and attend court for directions on 29 October 2024 but in the meantime, the warrant of attachment has been issued and unless the same is stayed, the appeal will be rendered nugatory.
2. Advocate Asige aver in his Affidavit that the appellants' goods used in the day-to-day running of the business have been proclaimed and unless there is a stay of execution, the same will be sold.
3. The appellant has filed Appeal E223 of 2024 *Suhufi Palace Hotel Limited v Abdalla Wepo Makhoha* and if its goods are sold in attachment, the appeal will be rendered nugatory.
4. In reply, the respondent filed his Replying Affidavit and aver that based on the records, the matter was for judgment on 30 May 2024 when the appellant logged in late. There was notice but no action was taken to move the court until execution was levied. Through letter dated 22 August 2024 was never served upon the respondent or uploaded on the online portal and this was solely created to support this suit.
5. The respondent aver that the appellant has not explained the delay between 22 August 2024 to date. The application is only meant to delay the fruits of the judgment and should be dismissed with costs.



- 6. Both parties filed written submissions which are analyzed and the single issue for determination is whether an order of stay of execution pending attendance in court for taking hearing directions should be issued.
- 7. The nature of the orders sought is brief and interim, that the court be pleased to grant prevervatory/ conservatory orders of stay of execution pending the attendance before this court for taking hearing directions on 29th October 2024 as ordered by this court.
- 8. This instance has come and passed. The subject for the miscellaneous application is spent.
- 9. The appellant as the applicant has admitted that there is Appeal E223 of 2024 *Shufi Palace Hotel Limited v Abdalla Wepo Makhoba*. This is the core foundation that should be applied to seek the orders sought herein.
- 10. Filing various suits including a miscellaneous application seeking a stay of execution is pure abuse of the court process.
- 11. A miscellaneous application should serve a single purpose. Once spent, the suit ends at that point.
- 12. Moving forward, where the appellant herein has filed Appeal E223 of 2024 *Shufi Palace Hotel Limited v Abdalla Wepo Makhoba*, other processes should result from such matter.
- 13. This matter is spent. There was no need to bring these proceedings against the respondent as such should have been addressed under the Appeal E223 of 2024 *Shufi Palace Hotel Limited v Abdalla Wepo Makhoba*. On this basis, the appellant is to meet costs due to the respondent.
- 14. Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA THIS 19TH DAY OF DECEMBER 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

