



**Corrugated Sheets Limited v Kalama & 10 others (Appeal E021 of 2024)
[2024] KEELRC 13475 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13475 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E021 OF 2024
M MBARŪ, J
DECEMBER 18, 2024**

BETWEEN

CORRUGATED SHEETS LIMITED APPELLANT

AND

**FREDRICK MWAPONDA KALAMA 1ST RESPONDENT
DALMAS OMONDI OTULE 2ND RESPONDENT
SALESIO GITONGA NJOGU 3RD RESPONDENT
RAJAB TSUWI KATANA 4TH RESPONDENT
KATANA GALA KANINA 5TH RESPONDENT
SAMSON MUTUA MBITI 6TH RESPONDENT
DAUDI MWANGOMA 7TH RESPONDENT
SAID CHARO IHA 8TH RESPONDENT
EDWIN LUGADIRU MUDANYA 9TH RESPONDENT
JOHN MAKAU MUSYOKA 10TH RESPONDENT
MICHAEL NDWIGA MBOGO 11TH RESPONDENT**

RULING

1. The appellant filed an application dated 23 August 2024 seeking orders of stay for the execution of the judgment delivered on 9 August 2024 in Mariakani MCELRC E022 of 2022, which consolidated several other suits CMELRC E024, E025, E026, E027, E028, E029, E030, E031, and E032 of 2022.



2. The application is supported by the Affidavit of Evans Francis Muigai, the human resources officer of the appellant, and on the grounds that following the judgment by the trial court, the appellant is aggrieved and has filed this appeal. The decretal sum is substantial at Ksh.4, 200,000, which is exorbitant and not justified, and unless there is a stay of execution, the appellant's appeal will be rendered nugatory. The respondents are likely to execute the payment of the decretal sum, and unless restrained through an order of the court, the appellant will suffer irreparable loss and damage.
3. In his supporting Affidavit, Muigai avers that the appellant has already filed the Record of Appeal. Triable issues of law and fact should be addressed first before the respondents can be allowed to execute. The application seeking a stay of execution was filed without delay and immediately after judgment by the trial court. The appellant is willing to abide by any conditions that the court will direct for the order of stay of execution.
4. In reply, the respondents filed the Grounds of Opposition and Replying Affidavit of Frederick Mwaponda Kalama, stating that the instant application was filed in bad faith as they prosecuted their case with fairness and equity, and the application by the appellant was only aimed at delaying the just and fair enjoyment of its fruits.
5. Kalama, in his Affidavit, avers that the appellant has not established sufficient cause to warrant the orders sought. The orders sought are punitive, and the appeal raises no arguable grounds to justify a stay of execution. There is no offer of a security deposit. The court should direct the appellant to deposit the judgment award in a court escrow account in the event a stay of execution is allowed.
6. Both parties attended and agreed to address the application through oral and skeleton-written submissions.
7. The appellant submitted that they have satisfied conditions under Order 42 Rule 6 of the Civil Procedure Rules. They will suffer substantial loss and damage if the stay of execution is not allowed since the judgment awards are exorbitant, and the respondent will not be able to refund. There are triable issues of law and fact in the appeal. The Record of Appeal has already been filed to demonstrate that the appellant is keen on prosecuting the same.
8. The respondents submitted that under Order 42 rule 6, an applicant seeking a stay of execution must demonstrate the substantial loss to be suffered if the order is not granted, which the appellant still needs to address. The respondents have a valid judgment and should be allowed to enjoy the fruits. The allegations that they have no means to repay the decretal sum should the appeal be allowed should not be applied to defeat their legitimate judgments. If the application is permitted, the court should order the appellant to deposit the total decretal sum of Ksh.4, 200,000 in an escrow account pending the appeal hearing.

Determination

9. It is not in dispute that the trial court at Mariakani delivered judgment on 9 August 2024. The appellant filed the instant application on 23 August 2024. The Record of Appeal herein has since been filed.
10. Regarding addressing the conditions under Order 42 rule 6, the appellant moved immediately.
11. However, at the core of an application for a stay of execution, the applicant must demonstrate that if execution is allowed, it will create a state of affairs that will irreparably affect or negate the essential core



of the applicant as the successful party in the appeal. Demonstrate the substantial loss to be suffered as held in the case of James Wagalwa & another v Agnes Naliaka Cheseto [2012] eKLR, that;

...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

12. In this case, the appellant's case is that the decretal sum is exorbitant and unjustified. The respondents have no means of repaying it if the appeal is successful. The core of the appeal is that the trial court erred in failing to find that the respondents had been paid all their terminal dues at the end of their contracts with the appellant and in failing to appreciate that the appellant had paid notice pay to the respondents.
13. This becomes a critical issue of the appeal, which should be heard on its merits.
14. This limb addressed that the appellant has not offered any security for the due performance of the lower court judgment. I agree with the respondents that the appellant has not provided or proposed any security for the due performance of the lower court decree. This should be done as a sign of good faith that they are ready and willing to commit to giving security. But my reading of Order 42 rule 6(2) (b) of the Civil Procedure Rules reveals that the court orders the kind of security the applicant should give as may ultimately be binding on the applicant. This modelling of the law ensures the court's discretion is not fettered.
15. In this regard, the appellant shall deposit 50% of the total decretal sum of Ksh.4, 200,000 in court pending the hearing and determination of the appeal. This should be done within 30 calendar days from the date hereof.

As there is the Record of Appeal, hearing directions shall be issued.
16. Accordingly, the application dated 23 August 2024 is with merit. An order of stay of execution pending hearing and determination of this appeal is hereby issued on condition that the appellant shall deposit 50% of the decretal sum in court within 30 calendar days from the date hereof and failure to which the order shall lapse and hearing directions for the appeal to issue. Costs to abide by the outcome of the appeal.

DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

