



**Banking Insurance and Finance Union (Kenya) v Gulf Africa Bank (Kenya) Limited  
(Cause E908 of 2021) [2023] KEELRC 341 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 341 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E908 OF 2021  
B ONGAYA, J  
FEBRUARY 10, 2023**

**BETWEEN**  
**BANKING INSURANCE AND FINANCE UNION (KENYA) ..... CLAIMANT**  
**AND**  
**GULF AFRICA BANK (KENYA) LIMITED ..... RESPONDENT**

**RULING**

1. The respondent in the suit has filed an application by the notice of motion dated November 4, 2022 and through Muriu Mungai & Company LLP. It invokes section 16 of the *Employment and Labour Relations Court Act* No 20 of 2011 and order 42 rule 6 of the *Civil Procedure Rules*. The prayer is for stay of execution of the judgment and decree made on September 26, 2022 pending the lodging, hearing and determination of Nairobi Court of Appeal, Civil Appeal No E757 of 2022, and, for costs of the application.
2. The application was based on the supporting affidavit of Lawi Sato and upon the following grounds:
  - i. By the judgment delivered on September 26, 2022 the Court ordered the respondent to compute and pay wages and allowances under the CBA covering the years 2020 to 2023 The computation was to be done within 30 days. The applicant was aggrieved and has appealed against that judgment.
  - ii. The respondent estimates the computed amounts to be Kshs 3, 000, 000.00. If the money is computed and paid out, it may not be easy to recover it from the claimant or its members in event the appeal is successful. The applicant is ready to abide by orders of the court with respect to security.
  - iii. It is in the interest of justice that the application is allowed.



3. The claimant opposed the application by filing in person the replying affidavit of Tom O' Odera, the National Deputy General Secretary sworn on November 16, 2022. It is urged that the respondent refused to implement the wage increase as was agreed in the CBA which was effective March 1, 2020 and another CBA effective March 1, 2021. The court delivered judgment on September 26, 2022 for the respondent to compute and pay wages and allowances under the CBA covering the years 2020 to 2023 – to be computed and paid by the respondent in 30 days. The claimant states that the applicant failed to comply and lacks audience before the court. While an appeal has been filed, the applicant is not precluded from obeying the orders in the judgment of September 26, 2022. The affected employees have suffered since March 1, 2020 for failure to receive the agreed wage increase. The appeal is not arguable as serious grounds of appeal are not disclosed. The employees should be allowed to enjoy the fruits of their successful litigation. The claimant's computes the amount due as Kshs 12,945,847.14.
4. The court has considered the parties' respective cases and submissions. The respondent has not computed the amount subject of the prayer of stay of execution and as was ordered by the court. In the circumstances it is difficult for the court to ascertain the sufficient security to be provided by the respondent for the expeditious satisfaction of the decree herein, should, the appeal in issue turn out as unsuccessful. Thus the court cannot conceivably grant a stay of execution within the terms of order 42 of the *Civil Procedure Rules* as relates to provision of due security for satisfaction of the decree.
5. The decree given on September 26, 2022 required the applicant to compute and pay the arrears within 30 days but the application was filed long after lapsing of that time. The applicant does not seek extension of that time and has made no indication of steps taken to compute and comply with the terms of the decree.
6. The court has considered all the circumstances of the case. It is for the applicant to compute the arrears and compute the accruing payments under the terms of the decree. It would not be just to fail to comply with the decree and a balance should be that in view of the appeal, the respondent must comply with the decree to compute the arrears and accruing payments on monthly basis per terms of the decree. The computed amounts be held in a secure joint interest earning account in the names of the claimant and the applicant's counsel. To secure compliance, the court will extent the time for the computation and deposit to be within 30 days from the date of this ruling. The applicant will pay the claimant's costs of the application fixed at Kshs 10,000.00 only.
7. In conclusion, the application filed for the respondent by the notice of motion dated November 4, 2022 is hereby determined with orders:
  - a. Pending the hearing of the appeal against the judgment and decree herein, there be stay of execution of the decree and in particular as respecting payment timelines and subject to:
    - i. The applicant computing all the due arrears as at end of February 2023 (to so compute by March 1, 2023), and, thereafter the accruing payments on monthly basis per the terms of the decree and for accruing amounts by every 5<sup>th</sup> of subsequent months as running until lapsing of the tenure set in the decree.
    - ii. The computed amounts in (i) above be held in a secure joint interest earning account in the names of the claimant and the applicant's counsel – to be deposited accordingly by March 13, 2023 and thereafter by every 5<sup>th</sup> of subsequent months running until lapsing of the tenure set in the decree (for computed accruing monthly dues per terms of the decree).
  - b. The claimant to pay the claimant's costs of the application fixed at Kshs 10,000.00 only.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 10<sup>TH</sup> FEBRUARY, 2023**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

