



**Chic Fashions Limited v Maundu (Appeal E136 of 2022)  
[2023] KEELRC 802 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 802 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E136 OF 2022  
MN NDUMA, J  
MARCH 23, 2023**

**BETWEEN**

**CHIC FASHIONS LIMITED ..... APPELLANT**

**AND**

**DANCAN KALUMU MAUNDU ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated August 18, 2022, the applicant seeks stay of execution of the judgment and decree of Hon Mr Paul K Rotich, Senior Principal Magistrate delivered on July 29, 2022 pending the hearing and determination of appeal on the grounds that the applicant is aggrieved by the said judgment and has filed an appeal. The record of Appeal is duly filed and matter is ready for hearing and determination.
2. That the applicant is ready and willing to deposit the sum of Kshs 100,000 constituting 50% of the judgment sum with the court to be held to the defendant's order. That the appeal has good prospects of success. That the application has been brought without undue delay.
3. The application is opposed by the respondent stating that the applicant has not satisfied the requirement of order 42, rule 6(2) of the *Civil Procedure Rules* in that it has not demonstrated that it would suffer substantial loss if the stay is not granted; that has not provided security for the due performance of the decree and the application has not been filed timeously.
4. The applicant filed a supporting affidavit joining issue with the respondent and reiterates that it has satisfied the requirements of order 42, rule 6(2) and is ready and willing to abide by any appropriate orders issued by the court.



## **Determination**

5. In this matter the record of appeal has been duly filed and appeal is ready for hearing and determination. The application was filed on August 18, 2022 upon delivery of the judgment of the court Aquo on July 29, 2022. The application is therefore not visited by undue delay.
6. The decretal sum herein is Kshs 270,175 and the court finds that it is in the interest of justice and fair play that the applicant be allowed to prosecute the appeal, which the court finds has been expeditiously filed.
7. The said appeal is arguable in the court's view and is not vexatious or an abuse of the court process.
8. With regard to the matter of security, the court has considered the offer by the applicant to deposit 50% of the decretal sum in court and the apposition by the respondent and holds that it is fair for the entire decretal sum to be deposited in a joint interest earning account in the names of the advocates for the parties.
9. In the final analysis, the application is granted and the court makes the following orders:-
  - (a) The judgment and decree of the lower court delivered on July 29, 2022 is stayed pending the hearing and determination of the appeal.
  - (b) The appellant/applicant to deposit the decretal sum in a joint interest earning account in the names of the advocates for the claimant and those for the respondent within 30 days of this ruling failing which the order for stay will lapse automatically and execution to follow.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23<sup>RD</sup> DAY OF MARCH, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

**S.K. Opiyo & Company for the Applicant**

**Njiru & Company Advocates for the respondent**

**Ekale – Court Assistant**

