



**Musili & 7 others v Insteel Limited (Cause E670 of 2020)
[2023] KEELRC 1289 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1289 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E670 OF 2020**

**L NDOLO, J
MAY 31, 2023**

BETWEEN

**FRANCIS KALII MUSILI 1ST CLAIMANT
DANIEL MUIRURI MBUGUA 2ND CLAIMANT
HULDER GAY MAKUMBI 3RD CLAIMANT
BENJAMIN MULINGE MUTUA 4TH CLAIMANT
TERESIA NJERI MAINA 5TH CLAIMANT
SAMUEL NJUKI NDIRANGU 6TH CLAIMANT
JUDITH ANNE ORIEDO 7TH CLAIMANT
ANN GACAMBI NDUNGU 8TH CLAIMANT**

AND

INSTEEL LIMITED RESPONDENT

RULING

1. On March 23, 2023, I entered judgment in favour of the Claimants for various amounts made of one (1) month's salary in compensation for unlawful redundancy and balance of severance pay.
2. Subsequent to this, the Respondent filed a Notice of Motion dated April 6, 2023, seeking stay of execution pending an intended appeal at the Court of Appeal.
3. The Motion is supported by an affidavit sworn by the Respondent's Senior Legal Officer, George G Maina and is based on the following grounds:
 - a. The Claimants filed suit challenging the redundancy process carried out by the Respondent and which led to the termination of their employment;



- b. By a judgment delivered on March 23, 2023, the claim was allowed and the Respondent was ordered to pay compensation of one (1) month's salary for unlawful termination and a further payment of balance of severance pay, being the difference in number of days that the unionised employees were paid, as against those that the Claimants, who were not unionised, were paid;
 - c. The Respondent is aggrieved by that portion of the judgment which found that the Claimants as management staff were entitled to redundancy dues being calculated on the basis of a Collective Bargaining Agreement, which they were not privy to, as well as the award of balance of redundancy dues;
 - d. The Respondent has since filed a Notice of Appeal and believes that it has an arguable appeal with a high chance of success and will suffer substantial loss unless a stay of execution of the decree is issued;
 - e. The total amount payable to the Claimants as balance of severance pay is quite substantial;
 - f. The current means of the Claimants are unknown and there is no material to suggest that they are able to pay back the decretal sums in the event the Appeal Court sets aside the judgment;
 - g. The Respondent is willing to furnish security as this Court may reasonably order;
 - h. The Respondent is also willing to make payment of the one (1) month's compensation ordered for each of the Claimants for unlawful termination, since that portion of the judgment will not be the subject of an appeal;
 - i. This Court had only granted 14 days' stay of execution, thus necessitating the filing of this application in order to avert execution by the Claimants.
4. The Claimants' response is contained in a replying affidavit sworn, by the 1st Claimant, Francis Kalii Musili on April 19, 2023.
 5. Musili depones that the Respondent has not demonstrated any special circumstances to warrant the Court to exercise its discretion in the Respondent's favour.
 6. He maintains that as decree holders, the Claimants are entitled to enjoy the fruits of their judgment.
 7. Musili opposes a blanket stay of execution and depones that the Respondent was transferring its assets to Mabati Rolling Mills.
 8. Regarding the Respondent's proposal to furnish only one third of the decretal sum as security, Musili asserts that adequate security ought to be capable of satisfying the decree, which may ultimately be binding on the judgment debtor.
 9. According to the Claimants, the security offered by the Respondent is not sufficient to guarantee satisfaction of the decretal sum, in the event that the appeal is dismissed.
 10. Musili finally depones that if the Court is minded to grant a stay of execution, it should be on condition that the Respondent deposits the full decretal sum plus costs and interest in a joint interest earning account in the names of the parties' Advocates.
 11. The Respondent's application is brought under Order 42 Rule 6 (1) and (2) of the [Civil Procedure Rules](#), which sets the following conditions for grant of orders of stay of execution pending appeal:
 - a. That the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and



- b. That such security as the court orders for the performance of such decree or order as may ultimately be binding on the applicant has been given.
12. The subject of the intended appeal being a money decree, the Claimants' ability to refund the decretal sum if the appeal succeeds, is critical. The Respondent casts doubt as to the Claimants' ability to repay the decretal sum.
13. On their part, the Claimants are amenable to a conditional stay of execution, subject to the Respondent depositing the entire decretal sum in a joint interest earning account in the names of the parties' Advocates.
14. To my mind, this is a reasonable proposition which secures both the Respondent's right of appeal and the Claimant's award.
15. In light of this and also taking into account that the one-month compensation award is not subject to appeal, I will grant a conditional stay of execution on the following terms:
 - a. The Respondent will release the one-month compensation award to the Claimants, through their Advocates, within the next fourteen (14) days from the date of this ruling;
 - b. The remainder of the decretal sum will be deposited in a joint interest earning account in the joint names of the parties' Advocates within the next thirty (30) days from the date of this ruling;
 - c. Failure to comply with any of the foregoing conditions will lead to an automatic lapse of the stay hereby granted.
16. The costs of this application will be costs in the appeal.
17. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF MAY 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Miriti for the Claimants

Mr. Thuita for the Respondent

