



**Corrugated Sheets Limited v Tsuma (Appeal E026 of 2023)
[2023] KEELRC 1329 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1329 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E026 OF 2023**

**M MBARŪ, J
MAY 25, 2023**

BETWEEN

CORRUPGATED SHEETS LIMITED APPELLANT

AND

PATRICK JANA TSUMA RESPONDENT

*(Being an appeal from the judgment of the Hon Lesootia Saitabau
delivered on 9th March, 2023 in CM ELRC No.382 of 2020)*

RULING

1. The appellant filed application dated April 5, 2023 seeking for orders that there be stay of execution of the judgment and all consequential orders following judgment in CM ELRC No.382 of 2020 delivered on March 9, 2023 pending the hearing of the appeal.
3. The application is supported by the affidavit of the Evans Muigai the human resource officer of the appellant and on the grounds that the lower court delivered judgment and awarded the respondent Ksh. 411,830.93 as employment terminal dues and aggrieved, the appellant has filed notice of appeal and memorandum of appeal herein and there is an arguable appeal and seek stay of execution to allow the hearing and determination of the appeal.
4. Mr Muigai also avers that the appellant is willing to deposit security for the due performance of the judgment is the appeal is addressed. The appellant is a company with branches all over the country and its financial standing is sound and will be able to comply with the orders of the court.
5. In reply, the respondent filed his replying affidavit and avers that there is a valid judgment and award of ksh. 411,830.93 and he is agreeable that the appellant has the right of appeal but to secure his interests, a conditional stay of execution be granted and the judgment sum be deposited in a joint interest earning account as security for the due performance of the decree.



6. The respondent avers that the decretal sum is pecuniary in nature and a deposit in an interest earning account will safeguard both party's interests and conditional stay is imperative. The appellant has been restructuring and declared redundancy and there is no evidence of the current financial status of the company and based on the trial court findings, the same should be preserved.
7. Both parties attended court through their advocates who made oral submissions and are agreed to the extent that the appellant has a right of appeal and the respondent is holding a valid and legitimate judgment. An order of stay of execution will safeguard the appellant to allow the court hear and determine the appeal and the respondent can only be secured with a deposit of the decretal sum in an interest earning account held in the joint names of the parties.
8. The court finds the submissions by the parties reasonable and practical and within the provision of Section 17 of the [Employment and Labour Relations Court Act, 2011](#) which gives a right of appeal and Order 42 rule 6 with regard to allowing stay of execution of terms and conditions that are necessary to allow the court hear the appeal and also secure the judgment of the trial court.
9. Accordingly, stay of execution is allowed on the judgment in CM ELRC No.382 of 2020 delivered on March 9, 2023 subject to the appellant deposit of the judgment sum of ksh. 411,380.93 in a joint interest earning account held by both parties within the next 14 days' failure to which the stay order shall automatically lapse. Costs shall follow the outcome of the appeal.

DELIVERED IN OPEN COURT AT MOMBASA THIS 25TH DAY OF MAY, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine and Rahma Ahmed

..... and

