



**S.S. Dhillon Transporters (K) Ltd v Wamiti (Appeal E041 of 2023)  
[2023] KEELRC 1222 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1222 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E041 OF 2023  
K OCHARO, J  
MAY 22, 2023**

**BETWEEN**

**S.S. DHILLON TRANSPORTERS (K) LTD ..... APPELLANT**

**AND**

**STANLEY WAINAINA WAMITI ..... RESPONDENT**

*(Being an appeal from the judgement and decree of Hon. Cheloti BM (PM)  
delivered on the 10th day of March, 2023 in the Milimani CMEL No.168 of 2019)*

**RULING**

1. Through the application dated 3<sup>rd</sup> April, 2023 the Appellant sought:
  - a. That the application be certified urgent and be heard *ex parte* in the first instance due to the reason of urgency.
  - b. That there be a temporary stay of execution of the decree in Milimani Cause No.1689 of 2019 pending the hearing and determination of the appeal herein.
  - c. That costs of the application be provided for.
2. The application is supported by the grounds obtaining on the face of the same and the supporting affidavit sworn by one Bhupinder Kaur Dhillon, the Director.
3. The application is opposed by the respondent upon premise of those grounds obtaining on the replying affidavit sworn by him on the 13<sup>th</sup> April, 2023.
4. When the application came up for hearing on the 9<sup>th</sup> May, 2023, Counsel for the parties intimated to court that principally a stay of execution of decree order pending appeal should be given. However, they were not in agreement on the security to be furnished by the Appellant/Applicant pursuant to the provision of Order 42 as rule (6) of the *Civil Procedure Rules*.



- 5. The parties let this sole issue for determination by this court. However, they did not do without making proposals. The Appellant/Applicant proposed a bankers guarantee for the entire decretal sum as security, arguing that at the present it did not have funds to furnish in cash as security. The respondent on the other hand proposed that the Appellant be directed to offer cash equivalent to the sum of the decretal amount to be deposited in a joint interest earning account in the names of counsel for the parties.
- 6. I have carefully considered the representation by Counsel for the parties, and the purpose for which the law insists on furnishing of security and condition for stay pending appeal. The condition fulfilled, assures due performance of the decree, the subject matter of the appeal, should the appeal fail.
- 7. The court has also noted and considered the appellant disclosure that it has no funds to furnish as security, a pre-condition to enjoyment of an order of stay pending appeal, which disclosure may be genuine but issues a red flag.
- 8. For fairness sake, the situation at hand requires a balancing act. The only one which come to my mind is that, half of the decretal amount should be deposited in an interest earning account in the names of counsel for the parties and for the other half a bank guarantee should be furnished. This should happen within 30 days of this ruling.
- 9. If the respondent fails to furnish the security as directed hereinabove within the set time, execution to proceed forthwith.

**DATED, SIGNED AND DELIVERED THIS 22<sup>ND</sup> DAY OF MAY, 2023.**

**OCHARO KEBIRA**

**JUDGE**

**22.5.23**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

.....

**Ocharo Kebira**

**Judge**

