



**Muchiri v African Agricultural Technology Foundation (AATF) & another
(Cause 663 of 2019) [2023] KEELRC 1546 (KLR) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1546 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 663 OF 2019
AN MWAURE, J
JUNE 16, 2023**

BETWEEN

CAROLINE MUCHIRI CLAIMANT

AND

**AFRICAN AGRICULTURAL TECHNOLOGY FOUNDATION (AATF) 1ST
RESPONDENT**

QUALIBASIC SEED COMPANY (QBS) KENYA 2ND RESPONDENT

RULING

1. The Applicant by his application dated September 20, 2022 prays for the following orders:-
 1. That this Application be certified urgent and be heard ex parte in the first instance.
 2. That pending the hearing and determination of this Application inter partes, this Honourable Court be pleased to grant an interim order of stay of execution of the orders issued by this Honourable Court in its ruling delivered on August 18, 2022 in respect of production of the documents under paragraphs 3 and 5 of the Notice to Produce dated November 13, 2020.
 3. That pending the hearing and determination of the Intended Appeal by the Respondents, this Honourable Court be pleased to grant an order of stay of execution of the orders issued by this Honourable Court in its ruling delivered on August 18, 2022 in respect of production of the documents under paragraphs 3 and 5 of the Notice to Produce dated November 13, 2020 and an order for stay of proceedings pending the hearing and determination of the appeal.
 4. That the costs of this Application be in cause.
2. The application was supported by an affidavit deponed by one Anne Kithinzi an advocate with the applicant's counsel's firm.



3. She depones that the orders granted by this court by its Ruling of August 18, 2022 involved documents that are protected by advocate and client confidentiality under Section 134 and Section 137 of the *Evidence Act* (Cap 80). These are letters exchanged between the 1st Respondent and the firm of Kaplan Stratton Advocates during the Claimant’s disciplinary proceedings and so is subject to advocate and client privilege.
4. That unless an order staying execution is issued, there is imminent risk that the Respondents will be compelled to produce the said privileged information and documentation. She says that the said production will prejudice the Respondents’ rights to fair hearing and render the intended appeal nugatory.
5. The court is being asked to grant a stay of execution of the orders for production of the documents referred thereto which the honourable court had ordered they be produced on trial at the behest of the Claimant.
6. The Claimant did not put a response and so ideally the application is not opposed.
7. The court has found the appeal is not filed and the only reason the court will allow the prayer for stay of execution is;
 1. To allow the appellant/applicant to proceed with the appeal and as well the appellant/applicant did not delay to file this application.
 2. The Claimant did not oppose the application and so the court will exercise its discretion and allow the interim stay of execution order pending the hearing and determination of the intended appeal.
8. The court in the case of *RWW -vs- EKW* (2019) eKLR stated as follows:-

“The purpose of an application for stay of execution pending appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory.”
9. The court has considered that the Claimant did not oppose the application for stay of execution and the court finds it reasonable to allow the stay so that the appeal can be heard in its entirety. So, the application for stay is granted and the costs of this application will be in the intended appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 16TH DAY OF JUNE, 2023

ANNA N. MWAURE

JUDGE

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 15th March 2020 and subsequent directions of 21st 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 Civil 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.

ANNA N. MWAURE

JUDGE

