



Royal Garments Industries EPZA Limited v Kanyanga (Miscellaneous Case E089 of 2023) [2023] KEELRC 2052 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 2052 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE E089 OF 2023**

NJ ABUODHA, J

JULY 28, 2023

BETWEEN

ROYAL GARMENTS INDUSTRIES EPZA LIMITED APPLICANT

AND

MILDRED ASIGI KANYANGA RESPONDENT

RULING

1. The applicant dated February 28, 2023 seeks an order for the extension of time to file an appeal against the judgment of the trial court Hon S. N Muchungi delivered on December 29, 2022. The applicant further seeks stay of execution of the said judgment and decree issued thereafter.
2. The application was supported by the affidavit of Victoria Nyaga who deponed inter-alia that;
 - a. That I am informed by my advocates on record whose information I verily believe to be true that the power to grant leave to a party to appeal out of time is a discretionary one and for the court to exercise its discretionary favour towards the applicant and allow them to appeal out of time the court must be satisfied that the applicant had good and sufficient cause for not filing the appeal in time.
 - b. That the applicant has not given a good reason why the appeal was not filed within time as I am advised by my advocates on record whose advice I verily believe to be true that a copy of proceedings is not needed for one to file an appeal. In any event, the applicant has annexed the appeal which they drafted without a copy of the judgment which they claimed not to have and it is therefore clear that the applicant had the ability to file an appeal in good time but failed to do so due to indolence on their part.



- c. That I am advised by my advocates on record whose advice I verily believe to be true that the applicant has not satisfied the conditions set out in order 42 rule 6(2) of the Civil Procedure Rules, 2010 to warrant an order of stay of execution.
 - d. That in seeking for stay of execution, the applicant has stated that it will suffer substantial loss if stay of execution is not granted. The applicant has however not demonstrated how it will suffer substantial loss if the stay is not granted.
 - e. That despite the applicant's application being dated February 28, 2023, the same was filed on April 18, 2023 meaning that despite the applicant being aware that they were out of time by February 28, 2023, since the initial 30 days' stay lapsed on January 29, 2023, they delayed further by close to two months in filing their application. The reason for this delay has not been explained by the applicant and it is therefore clear that the applicant's motion has been brought with inordinate delay.
3. The respondent opposed the application and filed a replying affidavit in which she deponed among others that:-
- i. That I am the Human Resource Manager of Royal Garments Industries EPZA Limited, the appellant/applicant herein, and I am well conversant with the facts of the case and therefore competent to swear this affidavit.
 - ii. That on December 29, 2022 Hon S. N Muchungi delivered a judgment in favour of the respondent which decision the intended appellant /applicant intends to appeal against wholly (annexed hereto and marked as "VN-1" is a copy of the memorandum of appeal).
 - iii. That I believe and I am well advised by my counsels on record that the appeal is arguable and has chances of success; in particular that the lower court failed to consider the appellant's/applicant's evidence of lawful and just termination and awarded the respondent compensation based issues not raised by any of the parties.
 - iv. That the lower court granted stay of execution of the judgment and order thereof for 30 days which is about to lapse and the appellant/applicant is apprehensive that the respondent will proceed with execution before the appeal is heard and determined thus rendering this application and the appeal nugatory.
 - v. That the appellant/applicant will suffer substantial loss unless a stay of execution is granted since there is no evidence that the respondent has the means to refund the amount awarded if the appeal is successful.
 - vi. That the appellant's/applicant's have sought for certified copies of the typed proceedings and judgment to enable the prosecution of the appeal. (annexed hereto and marked as "VN-3" is a copy of the letter requesting for certified copies of the proceedings and judgment)
 - vii. That this application has been brought without unreasonable delay.



4. The principle for grant of stay of execution are set out under order 42 rule 6(2) of the *Civil Procedure Rules*. They are that the order would not be made unless the court is satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without reasonable delay and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
5. The judgment herein was delivered on December 29, 2022 and the applicant granted 30 days stay of execution which lapsed on or about January 30, 2023. The application before me is dated February 28, 2023 but filed on April 19, 2023. This is some three and half months after expiry of the stay of execution informally granted by the trial court. Although the applicant alleges that they have sought for copies of typed proceedings, no evidence of such request has been filed with the application. In any event such proceedings are not a prerequisite for filing an application for stay of execution.
6. The applicant further seeks extension of time to file an appeal. On this the court also notes that the judgment to be appealed from was delivered on December 29, 2022. This is over five months ago. Again, no reasonable explanation has been offered for such inordinate delay.
7. The power to grant extension of time to file an appeal out of time is discretionary and for the court to exercise such discretion in favour of the applicant, sufficient cause for the delay must be shown. This is lacking in this application.
8. For both prayers, the court takes the view that the applicant has taken the court process quite casually and the present application is merely intended to delay the respondent from enjoying the fruits of her judgment.
9. The application is therefore found without merit and is hereby dismissed with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS DAY OF 28TH DAY OF JULY, 2023.

ABUODHA J. N.

JUDGE

In the presence of:-

.....**for the Applicant**

.....**for the Respondent**

