



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njunge v Muasya (Cause E040 of 2023) [2023] KEELRC 1692 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1692 (KLR)

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

**CAUSE E040 OF 2023**

**NJ ABUODHA, J**

**JULY 14, 2023**

**BETWEEN**

**ALEX KAMWERU NJUNGE ..... APPELLANT**

**AND**

**ANNIE MUNINI MUASYA ..... RESPONDENT**

**RULING**

1. By a motion dated April 3, 2023 the applicant/appellant seeks orders *inter-alia*:-
  - a. That the Honorable Court be pleased to order stay of execution of the Judgement given on March 20, 2023 in Chief Magistrates Court at Milimani in MC ELRC No 412 /2018 and decree pending the hearing and determination of this application interparties.
  - b. That the Honorable Court be pleased to order stay of execution of the Judgement given on March 20, 2023 in Chief Magistrates Court at Milimani in MC ELRC No 412 /2018 and decree pending the hearing and determination of the appeal.
2. The application is supported by the affidavit of the appellant in which he deponed among others that:-
  - i. That the Chief Magistrates Court at Milimani in MC ELRC No 412 /2018 gave a Judgement on March 20, 2023 and ordered the Appellant to pay Kshs 405,173.15 plus costs and interest. (Annexed and Marked AKN 1 is a copy of the judgement.)
  - ii. That the Application herein is urgent as I was only given a temporary stay of execution that is expiring by April 20, 2023 by the trial court.
  - iii. That I have filed a memorandum of appeal and intends to pursue an appeal in the case (Annexed and Marked AKN 2 is a copy of the Memorandum of Appeal.)
  - iv. That I have applied for certified copies of proceedings and is following up on them. (Annexed and Marked AKN 3 is a copy of the letter for proceedings and emails.)



- v. That the Respondent has been aggressively pursuing the case in person and will seek execution immediately the temporary stay granted by the trial court of 30 days expires.(Annexed and Marked AKN 4 is a copy of a letter.)
  - vi. That I will suffer substantial loss if my property is attached in execution without the hearing of his appeal.
  - vii. That the loss will be irreparable as the Respondent was initially assisted by legal aid and later acted in person due to lack of any funds.
  - viii. That unless the orders sought herein are issued the appeal will be rendered nugatory.
  - ix. That I believe I have a good appeal as the claim by the Respondent was time barred in law and the specific claims were not proved.
  - x. That the Respondent was wrongly allowed to extend the time for filing the appeal and the court failed to address the issue that the time to file a contract claim cannot be extended. .(Annexed and Marked AKN 5 are copies of the orders extending time that were suspect)
  - xi. That the issue of the extension of time to file the case was raised at the earliest possible time and the magistrate then gave a ruling in the absence of parties. .(Annexed and Marked AKN 6 is a copy of the Ruling)
  - xii. That the trial magistrate failed to differentiate the issues raised initially of lack of orders allowing filing the claim out of time and the submissions raised that a claim for employment contract could not be granted orders for extension of time to file case.
  - xiii. That the trial court also failed to distinguish between the Appellant and the company Sheqel Investments Ltd that is a separate legal entity and this may lead to the wrongful attachment of the assets of the Appellant.(Annexed and Marked AKN 7 is a copy of certificate of incorporation of the said company).
3. The respondent filed a replying affidavit in which he stated among others that;-
- a. That the application dated April 3, 2023 and the annexed affidavit of Alex Kaweru Njunge sworn on April 3, 2023 has been explained to me and I wish to reply stating that the application is brought in bad faith to delay justice
  - b. That as much as it is the Respondent's right to appeal, the Respondent/Applicant is bend on delaying the Justice not to be done and make sure I, the claimant will not enjoy the fruits the of the award herein.
  - c. That in the interest of justices and fairness to the claimant, the Respondent be ordered to deposit the awarded amount of Kshs 405,173.15 in court and make provision for security of costs otherwise the application should be dismissed.
4. Both parties however filed submissions which the court has considered and is grateful to Counsel.
5. Th applicant has raised a fundamental issue which goes to the jurisdiction of this court and that of the trial court. That is to say that the matter herein was filed outside the three year limitation period provided for under Section 10 of the *Employment Act*. The court has perused the ruling of the trial court therein delivered on May 16, 2022. This ruling has similar implications on the judgment of the lower court intended to be appealed from. For that reason alone, the court will grant an unconditional stay of execution pending the hearing and determination of the appeal.



6. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS DAY OF 14<sup>TH</sup> DAY OF JULY, 2023.**

**ABUODHA J. N.**

**JUDGE**

**In the presence of:-**

.....for the Appellant

.....for the Respondent

