



**Corrugated Sheets Limited v Oganyo (Appeal E036 of 2023)  
[2023] KEELRC 1687 (KLR) (10 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1687 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E036 OF 2023**

**AK NZEI, J  
JULY 10, 2023**

**BETWEEN**

**CORRUGATED SHEETS LIMITED ..... APPELLANT**

**AND**

**VICTOR MUNDA OGANYO ..... RESPONDENT**

*(appeal from the judgment of the Chief Magistrate Court – Mombasa  
Hon. D.O. Mbeja delivered on 30th March 2023 in MCELRC No. E222/21)*

**RULING**

1. The application before me is the appellant’s Notice of Motion dated April 26, 2023. The application is expressed to be brought under sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 Order 51 Rule 1 of the Civil Procedure Rules and article 50 of the Constitution of Kenya. Orders sought by the appellant/ applicant are as follows:-
  - a. that the application be certified urgent and (be) heard exparte at the first instance.
  - b. that pending hearing and determination of the application, the Court be pleased to grant further stay of execution of the judgment and all consequential orders granted in the judgment delivered on March 30, 2023 in MCELRC Cause No. E222 of 2021 by Hon. D.O. Mbeja.
  - c. that pending the hearing and determination of the intended appeal, the Court be pleased to stay the execution of the judgment and all consequential orders granted in the judgment delivered on 30<sup>th</sup> March 2023 in MCELRC Cause No. E222 of 2021 by Honourable D.O. Mbeja.
  - d. that costs be provided for.



2. The application is premised on a supporting affidavit and a further affidavit sworn by one Evans Mungai, the Appellant/Applicant's Human Resource Officer, on April 26, 2023 and May 30, 2023 respectively. It is deponed in the said affidavit:-
  - a. that the trial Court delivered its judgement on March 30, 2023, awarding the Respondent a total of ksh. 585,390 plus costs of the suit.
  - b. that the trial Court's judgment is erroneous, irrational and unreasonable as cited in the memorandum of appeal.
  - c. that the Respondent may commence execution of decree from the judgment immediately the 30 days' stay of execution granted by the trial Court on March 30, 2023 lapses on or about April 30, 2023, to recover ksh. 704,690.
  - d. that if stay of execution is not granted, substantial loss may result to the appellant as once the said money is paid to the respondent it may not be recoverable.
  - e. that the appeal has reasonable chances of success, and will be rendered nugatory if execution proceeds.
  - f. that the Respondent is not a man of means and will not be able to refund the decretal sum if paid and the appeal thereafter succeeds.
  - g. that being a company with assets and investments in the country exceeding the judgment amount, the appellant/applicant is more than able to satisfy the decree herein should the appeal not succeeds.
  - h. that the appellant/applicant is ready to offer a bank guarantee for the judgment sum of ksh. 585,390, or deposit reasonable security in court pending the hearing and determination of the intended appeal.
    - i. that costs in the lower court suit are yet to be assessed.
3. The application is opposed by the respondent vide a replying affidavit sworn on May 12, 2023.
4. Other than the memorandum of appeal filed herein, the only other documents annexed to the affidavits sworn on behalf of the appellant/applicant are letters alleged to have been written to the trial Court by the appellant/applicant's advocates and copies of Party and Party bill of costs. A copy of the trial Court's judgment and/or decree said to have been appealed against vide the present appeal was not filed together with the memorandum of appeal filed herein on April 26, 2023, and none has been annexed to the affidavits filed herein.
5. Rule 8(4) of the *Employment and labour relations Court (procedure) Rules* 2016 provides as follows:-

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“(4) A memorandum of appeal shall be accompanied by copies of the proceedings, all documentary evidence relied on and a copy of the judgment from the proceedings of the matter being appealed against.

Provided that where copies of proceedings are not filed with the memorandum of appeal, the appellant shall file such copies as soon as possible and within a reasonable time. Appeals.”
6. None of the documents mentioned in the foregoing Rule has been placed before this court. Indeed, other than an alleged party and party bill of costs that was annexed to the appellant's further affidavit



filed herein as already stated in this Ruling, nothing has been placed before this court relating to the trial court's suit.

7. Parties and/or their Counsel should take this court's proceedings with the seriousness that they deserve. This court cannot be called upon to stay execution of a decree and/or judgment that it has not seen. The application before me is hollow and therefore incompetent, and must fail. The same is hereby dismissed with costs.
8. The interim order of stay of execution granted on May 15, 2023 is accordingly vacated.
9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 10<sup>TH</sup> JULY 2023**

**AGNES KITIKU NZEI**

**JUDGE\_**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

**JUDGE**

Appearance:

Mr. Koganga for Claimant

Mr. Adede for Respondent

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***Appeal E036/23***

