



**Taylor v Bedi Investments Limited & another (Cause  
E107 of 2021) [2023] KEELRC 1984 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1984 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E107 OF 2021  
NZIOKI WA MAKAU, J  
JULY 3, 2023**

**BETWEEN**

**JOHN HENRY TAYLOR ..... CLAIMANT**

**AND**

**BEDI INVESTMENTS LIMITED & ANOTHER ..... RESPONDENT**

**RULING**

1. The Respondents/Applicants filed a Notice of Motion Application dated August 24, 2022 seeking to be heard for orders that this Honourable Court be pleased to stay the execution of the Judgment and Decree pending the hearing and determination of this application and of the intended appeal. They also sought for costs of the application to be provided for. The Application is premised on the grounds that the Judgment in the matter was delivered on in favour of the Claimant on April 27, 2022. That the Respondents being aggrieved, have filed and served a Notice of Appeal dated May 6, 2022 intending to Appeal against the entire Judgment. That the Respondents had also requested and paid the requisite fees for typed proceedings for purposes of appeal. That the Decree in the matter was yet to be drawn and if there was any, then the same had not been served upon by the Respondents. In addition, that neither had costs in the matter been assessed nor had the Claimant caused a certificate of costs to be drawn and served. That however on August 22, 2022, the Claimant's advocates served the Respondents' advocates with a notice to execute decree. That unless the said execution is stayed, the Claimant is threatening to execute against the Respondents a sum of Kshs 880,438/- with interest at the rate of 12% together with costs of a sum of Kshs 303,930/-.
2. Further, the Applicants asserted that the Application had been brought without any inordinate delay and that if the decree is not stayed considering the fact that the Claimant is a foreigner residing outside the jurisdiction of this Court with no known assets, any monies paid by the Respondents may not be recoverable in the event the appeal succeeds. That the intended Appeal is arguable and will be rendered nugatory if execution is not stayed is in the interest of justice. The Application was supported by an affidavit sworn by Jaswinder Singh Bedi who reiterated the grounds of the Application. He averred



that the Respondents are willing to offer any security which this Court may direct for the satisfaction of any decree that may eventually be found binding against them.

3. In response, the Claimant/Respondent filed a Replying Affidavit dated November 2, 2022 averring that the Respondents are guilty of laches and have deponed half-truths in their affidavit hence misleading this Court. That whereas the Notice of Appeal was served upon him, he was not served with a Memorandum of Appeal and was aware that a Notice of Appeal does not serve as stay of execution of a decree. Furthermore, that a draft memorandum of appeal cannot be used as an excuse to delay execution. He further averred that the Respondents were served with a Decree dated August 30, 2022 and had treated with contempt the Notice of Execution served upon them four months from date of judgment. That his advocates had also written to the Deputy Registrar requesting the matter be scheduled for Mention for purpose of fixing a date for taxation assessment as shown in the Draft Bill of Costs.

4. It was the Claimant's contention that the present Application was made in bad faith, lacked merit and was an abuse of the court process. That on the contrary, it is an injustice to obstruct him from enjoying the fruits of the judgment. He averred that there was an inordinate and unreasonable delay on the part of the Respondents as the Application had been brought before court four months (120 days or thereabout) after the judgment was delivered. That the Respondents had also not indicated any substantial loss they may suffer if this Application was not allowed. It was the Claimant's position that contents of the Application are further malicious, frivolous, and vexatious and ought to be dismissed with costs in the interest of justice.

5. Respondents/ Applicants' Submissions

The Applicants submitted that section 13 of the *Employment and Labour Relations Court Act* provides that enforcement of court orders shall be in accordance with the rules made under the *Civil Procedure Act*. Further, Rule 32 of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides that Rules on execution of an order or decree shall be enforceable in accordance *Civil Procedure Rules*. It was the Applicants' further submission that the provisions of Order 42 Rule 6(1) and (2) of the *Civil Procedure Rules* anticipate that for an application for grant of stay pending appeal to be successful, an applicant must prove the following conditions:

- a. That substantial loss may result unless the order is made;
- b. That the application has been brought without undue delay; and
- c. That such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.

6. That the above principles were outlined in the case of *Housing Finance Company of Kenya v Sharok Kher Mohamed Ali Hirji & another* [2015] eKLR where the Court of Appeal was guided by the court's decision in *Carter & Sons Ltd. v Deposit Protection Fund Board & Two Others* - Civil Appeal No. 291 of 1997 which held as follows:

“...the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . .the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.” (Emphasis supplied)



7. Regarding the purpose of a stay of execution order pending appeal, the Applicants cited the case of [\*Philip Mutinda v Lady Lori \(K\) Limited\*](#) [2021] eKLR in which this Honourable Court held that:

“There is no doubt that this Court has powers to stay proceedings pending appeal and this jurisdiction is meant to avoid a waste of precious judicial time as well as prevent the court from duplication of efforts and prevent multiplicity of suits and motions being filed and where if the stay is not granted and defendant were to succeed it would render the appeal nugatory. In such applications the Court aims at ensuring that the object of the application is not rendered nugatory and that substantial loss and irreparable harm is not suffered by the applicant once the matter proceeds and the appeal succeeds. Obviously, the application must be made without unreasonable delay. This power is discretionary hence the need to ascertain the promptness of the motion by the party intending to appeal...”
8. They also relied on the case of [\*Nicholas Stephen Okaka & another v Alfred Waga Wesonga\*](#) [2022] eKLR wherein the Court cited the case of [\*RWW v EKW\*](#) [2019] eKLR, in which the Court further stated though the grant or refusal of an application for stay of execution pending appeal is discretionary, the court must balance the interests of the parties and ensure that no party suffers prejudice that cannot be compensated through costs. As to what substantial loss is, the Applicants submitted that in the case of [\*James Wangalwa & another v Agnes Naliaka Cheseto\*](#) [2012] eKLR, the Court observed that the fact that the process of execution has been put in motion, or is likely to be put in motion does not by itself amount to substantial loss. The said Court was of the opinion that substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory. According to the Applicants, they have pleaded why they are likely to incur substantial loss if stay of execution is not granted and that it was for the Claimant/Respondent to show he has the resources since the matter is purely within his knowledge. The Respondent/Applicant called in aid the case of [\*Focin Motorcycle Co. Limited v Ann Wambui Wangui & another\*](#) [2018] eKLR.
9. Further, that in the case of [\*G. N. Muema P/A\(Sic\) Mt. View Maternity & Nursing Home v Miriam Maalim Bishar & another\*](#) [2018] eKLR, the Court cited the case of [\*Ujagar Singh v Runda Coffee Estates Limited\*](#) [1966] EA 263 where the court stated that whereas it is not normal for a court to grant stay of execution in monetary decrees, there are special features such as the amount payable under the decree being substantial and the plaintiff having no known assets within the jurisdiction from which the applicant can recoup if the appeal is successful. The Applicants submitted that contrary to section 94 of the [\*Civil Procedure Act\*](#) that stipulates that execution of a decree of a superior court cannot take place before ascertainment of the costs, if awarded, except with the leave of the court, the Application herein was filed before the costs had been assessed and without leave of court after the threat of execution of the decree. In addition, that they also filed a draft memorandum of appeal raising triable issues that ought to be determined yet the Court of Appeal’s rules of procedure do not permit the filing of a memorandum of appeal only.
10. It was the Applicants’ submission that the purpose of the security needed under Order 42 is to guarantee the due performance of order as may ultimately be binding on the Respondents/Applicants as held in [\*Arun C. Sharma v Ashana Raikundalia t/a A Raikundalia & Co. Advocates & 2 others\*](#) [2014] eKLR. They submitted that it is the Court that determines the security upon ordering stay, to ensure the due performance of the obligations by the Respondents/Applicants. The Respondents/Applicants submitted that they are willing and ready to abide by any condition and terms that this Court may impose as security for the due performance of the decree that may eventually be found binding upon them. The Applicants submitted that section 12(4) of the [\*Employment and Labour Relations Court Act\*](#) gives the trial court discretionary powers to award costs as it considers just. That in



addition, costs in this kind of claims do not automatically follow the event unlike in other civil claims. That there is no reason why they should be denied the costs of this Application as they have given sufficient reasons to warrant the court to exercise discretion in their favour.

11. There were no submissions by the Claimant/Respondent in the Court file at the time of penning this Ruling.
12. The issue for determination is whether the Applicants have demonstrated that the orders of stay of execution pending appeal are merited. Principles guiding the grant of a stay of execution pending appeal are well settled. Order 42 rule 6(2) of the Civil Procedure Rules which provides:
  - “No order for stay of execution shall be made under subrule (1) unless—
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) 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.
13. In addition, a stay in this regard may only be granted for sufficient cause and the Court in deciding whether or not to grant the stay has to take into account the overriding objective stipulated in sections 1A and 1B of the *Civil Procedure Act*. The courts are now enjoined to give effect to the overriding objective. An applicant for stay of execution of a decree or order pending appeal therefore, is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely (a) that substantial loss may result to the applicant unless the order is made, (b) that the application has been made without unreasonable delay, and (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.
14. The Respondents have asserted that they moved the Court in good time while the Claimant asserts the Respondents have presented the application in bad faith, that the same lacks merit and was an abuse of the court process. The Claimant asserts that on the contrary, the motion is an injustice and calculated to obstruct him from enjoying the fruits of judgment as the application had been brought before court four months or thereabout after judgment was delivered.
15. It is imperative to satisfy the conditions set out in law. The Respondents have to show that substantial loss may result to them unless the order is made. Other than asserting they will suffer substantial loss the Respondents have not demonstrated this alleged substantial loss they would suffer. The second aspect is that the Applicants have to demonstrate that the application has been made without unreasonable delay. The Court has seen the Notice of Appeal which was filed on May 10, 2022. The application seeking stay was filed on August 25, 2022 a period of 107 days after the filing of the Notice of Appeal and 120 days after the judgment was delivered. There is no explanation for the delay of over 3 months taken to file for stay. The Respondents therefore have not surmounted the first two hurdles. There is the condition that there must be offer of such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant being given. There is an offer for security made by the Respondents but this alone cannot be the basis for the grant of stay. As such, their application being found wanting in all material respects as regards stay, is dismissed with costs to the Claimant.

It is so ordered.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of July 2023**



**Nzioki wa Makau**

**JUDGE**

Page 3 of 3

