



Kenya Engineering Workes Union v Electro Technologies Limited (Cause E922 of 2021) [2023] KEELRC 1931 (KLR) (4 August 2023) (Ruling)

Neutral citation: [2023] KEELRC 1931 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E922 OF 2021
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN
KENYA ENGINEERING WORKES UNION CLAIMANT
AND
ELECTRO TECHNOLOGIES LIMITED RESPONDENT

RULING

1. The Court delivered judgment on April 25, 2023. The Court found that the claimant had proven that it recruited a simple majority of the employees of the respondent and was therefore entitled to recognition in accordance with section 54 of the *Labour Relations Act*. The Court ordered:
 - a. The respondent to deduct and remit union dues from all its employees who signed the check off form to the designated account of the claimant as specified in the check off form.
 - b. The respondent was directed to sign recognition agreement with the claimant within 30 days.
 - c. Each party to bear its costs of the suit.
2. The respondent filed an application dated May 8, 2023 through Kiptunge C & Company Advocates. It was brought under Order 42 Rule 6 of the *Civil Procedure Rules* 2010 and sections 1A and 3A of the *Civil Procedure Act* CAP 21 of the laws of Kenya. It was prayed that the Honourable Court be pleased to stay execution of the judgment and decree made on April 25, 2023 pending the hearing and determination of the intended appeal to the Court of Appeal. The application was based upon the annexed affidavit of Jacob AN Kaadee Advocate, sworn on May 8, 2023.
3. The respondent filed the Notice of appeal on May 16, 2023 that it intended to appeal against the whole judgment delivered by the Court on April 25, 2023.
4. The respondent's application by the notice of motion dated May 8, 2023 came up for hearing on May 22, 2023. The applicant being absent, the application was dismissed with costs for want of attendance.



5. The respondent has since filed an application dated May 23, 2023. It is brought under Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016, section 16 of the Employment and Labour Relations Court Act, 2014 and all enabling provisions of law. It is prayed that the Honourable Court be pleased to set aside the orders dismissing the respondent's application dated May 8, 2023 and all other consequential orders thereto and reinstate the suit for full hearing; and the costs be in the cause. The application was based upon the annexed affidavit of Bosibori Nyamwangei Advocate, sworn on May 23, 2023 and upon the following grounds:
 - a. That the respondent (applicant's) failure to attend court and prosecute this matter was not a deliberate omission. The suit was irregularly dismissed for want of prosecution on May 22, 2023. That was occasioned by technological fault and the same is regretted.
 - b. That the Court subsequently dismissed this suit for non-attendance on the applicant's part.
 - c. That it is in the interest of justice if the suit is reinstated.
 - d. That the claimant's (applicant's) suit has high chances of success.
6. The parties did not file submissions on the application. The Court has considered the material on record and returns as follows.
7. First, the applicant seeks prayers for setting aside the orders dismissing the respondent's application dated May 8, 2023, setting aside all consequential orders thereto, and, reinstating the suit for full hearing. The suit had already been determined by the judgment delivered by the Court on April 25, 2023. The suit had never been dismissed at all. The Court finds the prayer as drawn to be misleading and misconceived about the status in this case which had already been determined on merits.
8. Second, the application of May 8, 2023 prayed for an order of stay of execution pending hearing and determination of appeal against the judgment but in circumstances that the notice of appeal dated May 8, 2023 against the judgment had been filed but not served at all. Counsel for the applicant confirmed at the hearing of the application on July 26, 2023 that the notice of appeal had not been served. The applicant then in the grounds confirms that the claimant's suit had high chances of success. Such line of submission and argument confirms that the interests of justice will not be served as while purporting to appeal, the applicant nevertheless confirms that as found in the judgment, the claimant's case had high chances of success.
9. The application is liable to dismissal and each party to bear own costs. Orders will issue accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 04TH AUGUST, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

