



REPUBLIC OF KENYA



KENYA LAW
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**Khaemba v Transport Workers Union & another (Cause 1188 of 2015)
[2023] KEELRC 2144 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2144 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1188 OF 2015
NJ ABUODHA, J
SEPTEMBER 22, 2023**

BETWEEN

TITUS WAMALWA KHAEMBA CLAIMANT

AND

DAN MIHADI(SECRETARY GENERAL) 1ST RESPONDENT

TRANSPORT WORKERS UNION 2ND RESPONDENT

RULING

1. The Claimant filed application dated 17th March,2023 seeking for orders of stay of execution of the ruling delivered on 26th Janaury,2023 pending of the application and appeal in court of Appeal.
2. The application is supported by the Affidavit of Titus Wamalwa Khaemba the Claimant herein who averred that he was dissatisfied with the ruling of 26th January, 2023 and has appealed against the same and that the Respondents have commenced the process of execution rendering the appeal nugatory.
3. The Claimant averred that he has a good appeal and that he shall be prejudiced if stay is not granted.
4. In reply the Respondents filed their reply dated 4th April, 2023 and averred that the Claimant's application for stay of execution and the intended appeal are time barred for being filed out of time since ruling was delivered on 26th January, 2023 and appeal and stay made in 17th March, 2023 (past 30 days) and that the appeal has no chances of survival.
5. The Respondents further averred that the Claimant's Application was an abuse of court process as the issue had been previously litigated. Respondents produced evidence of payments to the Claimant which has never been disputed, the Claimant misled the court to issue orders over amounts already paid to him and that there was no new evidence to support the appeal and stay of execution.
6. The Application was disposed of by written submissions with each party submitting in support of their respective pleadings.



Determination

7. The grounds for stay of execution are well governed by the [Civil Procedure Rules](#) under Order 42 Rule 6 as follows;
 - (2) 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.
8. In [Joseph Odide Walome v David Mbadi Akello](#) [2022] eKLR the court in support of the above provision held as follows;

An applicant needs to satisfy the court on the following conditions before they can be granted the stay orders:

 - a. Substantial loss may result to the applicant unless the order is made,
 - b. The application has been made without unreasonable delay, and
 - c. Such security as the court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.
9. On the first limb of Claimant suffering substantial loss the Claimant has not illustrated which loss he will incur if the stay is not granted. In the above stated case of [Joseph Odide Walome v David Mbadi Akello](#) [2022] eKLR the court held as follows;

“The onus of proving that substantial loss would occur unless stay is granted rests upon and must be discharged accordingly by the applicant. It is not enough to merely state that loss will be suffered, the applicant ought to show the substantial loss that he will suffer in the event the orders sought are declined”.
10. On the second issue of unreasonable delay the Claimant filed his draft memorandum of Appeal dated 17th February,2023 on 22nd March,2023 and filed his application on 27th March,2023.
11. The Claimant is challenging the Ruling of the court delivered on 26th January, 2023. The Ruling stipulated that the Claimant was to pay the Respondents Kshs. 100,000/=as costs to be paid within 30 days.
12. The Claimant waited for the expiry of the 30 days to apply for stay of the execution on 27th March, 2023 which was past 30 days (in fact two months) after delivery of the ruling. The timelines for appeal is 30 days which the applicant did honour by filing draft memorandum of Appeal. He filed the same past time on 22nd March, 2023. The Claimant also filed a notice of Appeal lodged on 16th February, 2023 which is more than 14 days required to lodge such notice.
13. The Claimant has therefore not complied with the requirements of the above stated provisions to approach the court without unreasonable delay. I do not see why the Claimant waited for the 30 days granted by the court to lapse then move the Court for another order of stay. The Claimant has not sufficiently explained why he delayed to move the court for stay or appeal the said ruling.



14. On the third issue of payment of security of costs the Claimant averred that the same should be voided for he is jobless which fact was disputed by the Respondents that he is the General Secretary of Kenya National Union of Breakdown, Recovery, Commuters and Freight Agency Workers which fact the Claimant has not filed any rebuttal.
15. In any case it is the requirement that the applicant must deposit the security for satisfaction of a decree or order that the Court might ultimately make and where he is unwilling to do so, stay should not be granted.
16. Having found that the Claimant approached this court leisurely, he has not illustrated any substantial loss to be suffered, he is unwilling to deposit security for costs and that the Appeal having been filed out of time it goes without say that the Application seeking to stay the Execution is only made to frustrate the Respondents from enjoying the fruits of the judgment hence an abuse of the court process.
17. The application is therefore dismissed with costs.
18. It is so ordered.

DATED AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2023.

ABUODHA J.N

JUDGE

Delivered virtually this 22nd day of September, 2023

