



**Gichora v Matter Misericordiae Hospital (Employment and Labour Relations Appeal E115 of 2023) [2023] KEELRC 2702 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2702 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E115 OF 2023**

**K OCHARO, J  
OCTOBER 26, 2023**

**BETWEEN**

**ANNE WANJIRU GICHORA ..... APPELLANT**

**AND**

**MATTER MISERICORDIAE HOSPITAL ..... RESPONDENT**

**RULING**

1. Before me for determination is the Application dated 5<sup>th</sup> July 2023, which seeks the following orders:
  - i. The Honourable Court be pleased to stay the execution of the judgment made in MCELRC Case No. E799 of 2020 by Hon. B.M Cheloti on 29<sup>th</sup> May 2023 in the Chief Magistrates Court at Milimani, and any resultant Degree or consequential Orders therefrom, pending the inter partes hearing and determination of this Application.
  - ii. The Honourable Court be pleased to stay the execution of the judgment made in MCELRC Case No. E799 of 2020 by Hon. B.M Cheloti on 29<sup>th</sup> May 2023 in the Chief Magistrates Court at Milimani and any resultant Decree or consequential Orders therefrom, pending the hearing and determination of the Appeal.
  - iii. The costs of this Application be costs in the Appeal.
  - iv. Any other or further Order that this Honourable Court may deem fit and just to grant.
2. The Application is supported by the affidavit of Anne Wanjiru Gichora, the appellant/applicant, sworn on 5<sup>th</sup> July 2023 in which she reiterated the grounds set out on the face of the Application.
3. The affiant stated that she instituted a claim against the Respondent before the Chief Magistrates court Milimani being CMEL Cause No. E799 of 2020 seeking various reliefs following an unfair termination.



4. After hearing the matter on merit, the trial Court rendered itself on the matter by a judgment entered on the 29<sup>th</sup> of May 2023. Her claim was dismissed with costs awarded to the Respondent.
5. Being dissatisfied with the judgment she preferred the appeal herein seeking to set aside the entire judgment of the trial court. The appeal is arguable and raises strong and serious grounds. It will be just therefore that the orders sought in the instant application be granted.
6. She contends that if the orders of stay of execution sought herein are not granted, the appeal shall be rendered nugatory and reduced to an academic exercise. She stands to suffer a substantial loss. The application herein was brought timeously without undue delay.
7. In response to the Application the Respondent Filed grounds of opposition dated 2<sup>nd</sup> August 2023
8. The Respondent avers that there is no subject matter to be preserved by the stay sought whose disposal would render the appeal nugatory.
9. The respondent stated that the appellant has not demonstrated the irreparable loss she is likely to suffer if the stay is not granted.
10. The Respondent asserted that it is a financially sound entity that would repay the costs of Kshs 229,380 awarded to the Respondent if the appeal succeeded.

#### **Submissions**

11. By the time the court was retiring to write the ruling none of the parties had filed submissions

#### **Analysis and Determination**

12. Undoubtedly, the Appellant/applicant's suit before the trial was dismissed. The application herein is for a stay of execution in respect of a negative order. It is trite that negative orders cannot be stayed. In the case of *Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Milimo, Muthomi & Co. Advocates & 2 others* [2022] KECA 491, the Court of Appeal observed;

“ 17 ..... As submitted by the learned counsel for the 1<sup>st</sup> Respondent, the position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed. We reiterate the sentiments of the predecessor of this Court in its decision in *Western College of Arts and Applied Sciences v Oranga & Others* [1976-80] where the Court stated in respect of stay of execution as follows;

“But what is there to be executed under the judgement, the subject of the intended appeal” The High Court was merely dismissing the suit with costs. Any execution can only be in respect of costs. In *Wilson v Church*, the High Court had ordered the trustees of a church to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in an application for stay. It is so ordered”.

13. I am impelled to conclude that considering the nature of the judgment that the Appellant has assailed by way of the appeal herein, there is nothing for this Court to stay. Consequently, I find the Appellant's Notice of Motion Application wanting in merit and it is hereby dismissed.



**READ, DELIVERED AND SIGNED THIS 26<sup>th</sup> DAY OF OCTOBER, 2023.**

**OCHARO, KEBIRA**

**JUDGE**

In the presence of:

Mr. Mbugua for the Claimant

Mr. Kungu for the Respondent

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

**OCHARO KEBIRA**

**JUDGE**

