



REPUBLIC OF KENYA



KENYA LAW
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**Akanga v Capital Markets Authority (Cause 1187 of 2014)
[2023] KEELRC 2644 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2644 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1187 OF 2014
MN NDUMA, J
OCTOBER 19, 2023**

BETWEEN

SOLOMON AKANGA CLAIMANT

AND

CAPITAL MARKETS AUTHORITY RESPONDENT

RULING

1. The respondent/Applicant in the notice of motion dated 10/11/2022 seeks stay of execution of the judgment of this Court delivered on 6/10/2022 pending hearing and determination of the intended Appeal. The application is premised on grounds (1) to (20) set out on the face of the application and buttressed in the supporting affidavit of one Wycliffe M. Shamiah the Chief Executive Officer of the respondent.
2. The Court in its judgment awarded the claimant a sum of Kshs.922,782 comprising of 3 months' salary in lieu of notice; 3 months' salary in compensation for unlawful dismissal and payment in lieu of leave days not taken.
3. The respondent aggrieved by the decision filed a notice of Appeal dated 18/10/2022.
4. The applicant states that since the decretal sum was not factored in the present budget of the respondent, it stands the risk of decretal sum being executed against its assets.
5. That this would cause substantial loss to the respondent. That the respondent has a duty to protect public funds in the event the appeal is successful and execution has already taken place.
6. That Order 42, Rule 8 of the *Civil Procedure Rules* exempts government and government agencies from depositing security as a condition for grant of stay of execution pending appeal.
7. The respondent is willing to comply with such conditions as to security as may be set by the Court.



8. The respondent has not stated in the notice of motion or in the supporting affidavit expressly that it has an arguable appeal. The respondent only presents the handicaps it faces in implementing the judgment of the Court.
9. The respondent has not attached to the application a draft memorandum of Appeal for the Court to discern the grievance it has against the judgment of the Court.
10. This Court finds that an applicant who wishes the Court to exercise its judicial discretion to grant stay of execution of its judgment pending intended appeal must in the least state that it has an arguable appeal for the Court to take that into consideration in addition to taking account, that the application has been filed without undue delay and that the applicant has demonstrated that it would suffer substantial loss if stay of execution is not granted and the appeal is eventually successful.
11. The Court finds that the fact that there is pending an arguable appeal, which must not necessarily be successful is a cardinal consideration preceding the other two.
12. In the absence of an express assertion by the applicant that it has an arguable appeal, the Court cannot exercise its discretion in favour of the applicant.
13. The application lacks merit and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI(VIRTUALLY) THIS 19TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Wakwaya for Respondent/Applicant

Mr. Akanga for claimant/respondent

Ekale: Court Assistant

