



REPUBLIC OF KENYA



KENYA LAW
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Nyagah v Direct Line Assurance Company Limited & 6 others (Cause E004 of 2023) [2023] KEELRC 3133 (KLR) (28 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3133 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E004 OF 2023
NJ ABUODHA, J
NOVEMBER 28, 2023

BETWEEN

EVANS NYAGAH CLAIMANT

AND

DIRECT LINE ASSURANCE COMPANY LIMITED 1ST RESPONDENT

LISA ANYANGO AMENYA 2ND RESPONDENT

KIMAMO KURIA 3RD RESPONDENT

TOM OTIENO ODONGO 4TH RESPONDENT

KEN MARTIN MWENDA 5TH RESPONDENT

JACKSON KIONGA KAMAU 6TH RESPONDENT

KAMAU KURIA & COMPANY ADVOCATES 7TH RESPONDENT

RULING

1. By a Notice of Motion dated 5th April, 2023, Senior Counsel Dr. Gibson Kamau Kuria sought what I might describe as very unique yet curious orders which he contended were well grounded under order 42 rule 6 of the *Civil Procedure Act*.
2. The brief history and salient arguments surrounding this dispute are found in the ruling of my sister Lady Justice Monica Mbaru delivered in the related Cause No. 165 of 2020 on 28th March, 2023. A perusal of the ruling reveals that the issues apparently in the dispute between the parties were comprehensively canvassed before the learned judge and she carefully considered them and came up with her well-informed ruling.
3. This Court is a Court of co-ordinate jurisdiction with Lady Justice Mbaru who has since proceeded on transfer to Mombasa. Ordinarily this application for stay could have been placed before the learned



judge to consider however for administrative reasons and the docket system currently operational in the running of the Court, the same ended up on my desk. As observed, the learned judge fully and comprehensively interacted with the issues in dispute in the application before her and rendered her ruling. This Court is therefore placed in an awkward situation where it is being asked to second guess the learned Judge's ruling and hopefully see that she might have been wrong and that the Court of Appeal might overturn her ruling hence grant stay orders. This is uncomfortable indeed and should not be encouraged.

4. The principles governing grant or refusal of a stay of execution pending appeal are clearly set out under Order 42 rule 6 and this Court need not repeat them here. Judicial authorities are abound in this area as well. Therefore with tremendous respect to Senior Counsel Dr. Gibson Kamau Kuria, this Court is not persuaded that the application before it meets the parameters for stay of execution set out under order 42 rule 6. As observed earlier, the learned Judge delivered a well-considered ruling on the issue placed before her and if she was to be seized of the present application, she would be reluctant to grant the orders sought. This application in my honest view could have been best filed in the Court of Appeal where the Appeal is intended to be filed. That Court would have an opportunity to hear and consider arguments and perspectives afresh and render its determination thereon.
5. One of the unique prayers in the application is that I should order that the firms of Kamau Kuria & Company Advocates and Gakoi Maina be joined as parties in the suit. According to Dr. Kuria, his replacement by Gakoi Maina as Counsel acting for the 1st respondent deprived him of fees hence right to property which is a Constitutional right. The practice of law is governed by the Advocates Act and I fail to fathom how an advocate can act in a matter both as a party and Counsel for another party. This is not only odd and bizarre but would create a situation of conflict of interest and champerty.
6. A client has the right and freedom to change Counsel at any stage and if the issue be concerning fees, Dr. Kuria is senior enough to know how this should be pursued as against a client intending to change counsel. It is not in my view procedurally correct under Advocate Practice Rules, that counsel would be seeking to be joined in a suit he is or has been acting for a client who is a party to the same suit simply to protect his right to fees.
7. The foregoing having been said, this Court finds the application dated 5th April, 2023 without merit and declines to grant the orders prayed therein. The same is hereby dismissed with costs. This order applies to Cause No. 165 of 2020
8. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF NOVEMBER, 2023

DELIVERED VIRTUALLY THIS 28TH DAY OF NOVEMBER, 2023

Abuodha Nelson Jorum

Judge

