



Cupstone Travels Limited (CT) & another v Tindi & another (Appeal E023 of 2023) [2023] KEELRC 2828 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2828 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E023 OF 2023
M MBARŪ, J
NOVEMBER 9, 2023**

BETWEEN

CUPSTONE TRAVELS LIMITED (CT) 1ST APPELLANT

CUPSTONE TRAVELS LIMITED (CT) 2ND APPELLANT

AND

GIDEON MKANDO TINDI 1ST RESPONDENT

GIDEON MKANDO TINDI 2ND RESPONDENT

RULING

1. The appellant filed application dated 13 October 2023 under the provisions of Order 42 rule 6 and seeking for orders that stay of execution of the judgment and decree in Kaloleni ELRC No. E007 of 2023 - Gideon Mkando Tindi v Cupstone Travel Limited (CT) pending the hearing and determination of the appeal herein and costs be provided for.
2. The application is supported by the affidavit of Appolinary Kisimbo and on the grounds that judgment in Kaloleni ELRC No. E007 of 2023 and the respondent was awarded Ksh. 498,453 together with costs of the suit and aggrieved, the appellant has filed this appeal which has high chances of success and hence seek an order of stay of execution of the judgment pending hearing and determination of the appeal. The respondent is unemployed and has no means or capability to repay the judgment sum if this is paid to him pending the hearing of the appeal.
3. Other grounds in support of the application are that the appellant has filed this application without delay and within 30 days since the judgment issued and the orders sought should be issued.
4. Kisimbo aver in the affidavit that as the director of the appellant, they are keen to proceed with the appeal which raises triable issue and have applied for typed proceedings and certified copies of the judgment ready to prepare the Record of Appeal. the appellant is ready and willing to make a security



- deposit of Ksh. 300,000 for the due performance of the judgment which awarded Ksh. 498,000 to the respondent.
5. Under Order 42 rule 6 the court has the discretion on costs and security deposit pending hearing of the appeal. The appellant has offered to deposit Ksh. 300,000 less what was awarded at Ksh. 498,435 and with interests added, the total dues is Ksh. 655,936 which should be deposited in a joint interest earning account held by both parties.
 6. Both parties attended and made oral submissions.
 7. The respondent is not opposed to the appellant securing the appeal by a security deposit in a joint interest earning account held by both parties save, the total decretal sum of Ksh. 655,936 should apply and not the proposed Ksh. 300,000.
 8. The total judgment award before assessment of costs is Ksh. 498,453.
 9. The appellant is largely challenging the trial court judgment with regard to notice pay, underpayments and compensation.
 10. Order 42 rule 6 of the *Civil Procedure Rules* requires an applicant seeking stay of execution to demonstrate what loss and damage will be suffered if the judgment award is paid pending appeal. the indigence of a party, though relevant is not the sore consideration as upon the judgment, such a party has a valid order and should be allowed to enjoy the fruits of his claim while on the other hand safeguarding the right of appeal.
 11. For the court to be able to hear the appeal on the merits, the offer by the appellant to file the Record of Appeal within 21 days taken into account together with the offer to deposit part of the judgment sum of Ksh. 300,000 such places the appellant in good standing.
 12. Accordingly, judgment in Kaloleni ELRC No. E007 of 2023 is hereby stayed pending the hearing and determination of the appeal herein. The appellant shall deposit the sum of Ksh. 300,000 in a joint interest earning account held by both parties within the next 30 days and further file and serve the Record of Appeal within the next 21 days from the date hereof.
 13. Failure to abide as ordered above, the stay order shall automatically lapse.
 14. Mention on 7 December 2023 for taking hearing directions.

DELIVERED IN OPEN COURT AT MOMBASA THIS 9TH DAY OF NOVEMBER 2023.

M. MBARŪ

JUDGE

