



**Kenya Kazi Security Limited v Wanyoike (Appeal 192 of 2022)
[2023] KEELRC 3304 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3304 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 192 OF 2022
MN NDUMA, J
DECEMBER 20, 2023
FORMERLY APPEAL NO. E256 OF 2022**

BETWEEN

KENYA KAZI SECURITY LIMITED APPLICANT

AND

HENRY WANYOIKE RESPONDENT

RULING

1. Serving before court is a Notice of Motion Application dated 6th February 2023 seeking an order in the following terms:
 1. Spent
 2. Spent
 3. That upon hearing *ex parte*, there be an order of stay of execution of the Decree issued on 25th January, 2023 by the Chief Magistrate in MCELR No. 61 of 2018 – Kiambu and all other consequential orders and a stay of all and/or further proceedings in MCELR No. 61 of 2018 – Kiambu pending the hearing and determination of the Appellant/Applicant’s Notice of Motion Application dated 25th October, 2022.
 4. That costs of this Application be provided for.
2. The application is premised on grounds 1 to 13 set out on the face of the application the nub of which is that the lower court heard the suite *ex parte* and delivered a judgement on 28th September 2022 against the applicant in the sum of Kshs. 693,114/= plus costs and interest. That the matter proceeded *ex parte* upon the learned Magistrate dismissing the applicant’s adjournment application on good cause.



3. That the applicant shall suffer substantial loss if stay pending appeal is not granted. That the application has been filed timeously and it is in the interest of justice that the application be granted otherwise the appeal would be rendered nugatory. That the respondent will not suffer any prejudice that cannot be remedied by way of costs. That the applicant filed an appeal together with the application on 25th October 2002.
4. The respondent filed a notice of preliminary objection dated 15/12/2022 invoking the provisions of order 19 Rule 3(1) of *Civil Procedure Rule* No. 10 and a replying affidavit sworn on 15/12/2022 stating that the application has not met the threshold set out under order 42 rule 6 which provides:
 - “ No order for stay of execution shall be made under sub rule (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 for the due performance of such decree or order as may ultimately be binding on him – has been given by the applicant.”
5. In the present case, judgment, was delivered on 28th September 2022 and the application was filed timeously together with the notice of appeal before expiry of 30 days from the date of judgement. The application is not visited by inordinate delay. The applicant was not heard before the judgement of Kshs. 693,144/= was entered against it and is likely to suffer substantial loss if stay of execution is not granted pending appeal. In this respect, see the case of *Select Car Limited versus Gold Rock Development Ltd* [2015] Eklr. The court finds that the respondent will not suffer any prejudice provided the decretal sum is deposited in a joint interest earning account in the name of the advocate for the applicant and that of the respondent within 30 days of this ruling. In the event the deposit is not made timeously, the stay of execution which the court herein grants pending the hearing and determination of the appeal shall lapse and execution to issue
6. Accordingly, the court grants stay of execution of the judgment delivered on 28th September 2022 and any decree issued pursuant therefrom pending the hearing and determination of the appeal on terms aforesaid.
7. Costs in the cause.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2023

Appearances

Mrs. Omutimba for applicant

Mr. Njehu for respondent

