



**Keriko v Jomo Kenyatta University of Agriculture and Technology & 2 others
(Cause 718 of 2016) [2023] KEELRC 3258 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3258 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 718 OF 2016
B ONGAYA, J
DECEMBER 7, 2023**

BETWEEN

PROFESSOR JOSEPH MUNGAI KERIKO CLAIMANT

AND

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND
TECHNOLOGY 1ST RESPONDENT**

**VICE CHANCELLOR OF JOMO KENYATTA UNIVERSITY OF AGRICULTURE
AND TECHNOLOGY 2ND RESPONDENT**

**UNIVERSITY COUNCIL OF JOMO KENYATTA UNIVERSITY OF
AGRICULTURE AND TECHNOLOGY 3RD RESPONDENT**

RULING

1. The Respondents filed an application by the notice of motion on 13.02.2023 through Lutta & Company Advocates. The application was under order 51 Rule1, Order 42 Rule 6 of the [Civil Procedure Rules](#), 2010. The respondents are seeking the following orders:
 - a. That this application be certified urgent and heard ex-parte in the first instance.
 - b. That there be a stay of execution of the decree herein pending the hearing and determination of the respondent's appeal *vide* Court Of Appeal, Civil Appeal No. E500 Of 2022, Jomo Kenyatta University Of Science And Technology And 2 Others -vs- Professor Joseph Mungai Keriko.
 - c. That the Honourable Court do issue any other orders as it deems fit and just to meet the ends of justice.
 - d. That cost of this application be provided for.



2. The application is supported by the affidavit of Richard Wokabi Kariuki and made on the following grounds:
 - a. Judgment was entered for the claimant in the sum of Kshs.11,870,575.75 plus interest and costs of the suit.
 - b. The respondents have appealed against the whole judgment and seek orders of stay of execution pending the hearing and determination of the appeal.
 - c. The parties have filed their submissions on the claimant's Party and Party Bill of Costs and a ruling on the same is scheduled to be delivered on 21.02.2023.
 - d. The respondents have lodged an appeal *vide* Court Of Appeal, Civil Appeal No. E500 OF 2022, Jomo Kenyatta University Of Science And Technology And 2 Others Vs. Professor Joseph Mungai Keriko and the same would be rendered nugatory if the claimant executes.
 - e. The respondents would be placed under undue hardship in recovering any decretal sum paid out to the respondent should the appeal be successful.
 - f. The 1st respondent has sufficient means to pay the claimant the decretal sum in the event the appeal is unsuccessful.
 - g. The Court of Appeal has already given directions as to the filing of submissions and the respondents have already filed written submissions.
3. In response the claimant as respondent in the application, the grounds of opposition dated 27.02.2023 were filed through V. M. Ndung'u & Co Advocates and it was urged as follows:
 - a. The respondent/claimant is opposed to the application for stay of execution.
 - b. We request that the file be transmitted to Deputy Registrar to deliver the ruling on the cost.
 - c. The application is premature since the case is pending for a ruling for costs.
 - d. They should deposit the amount awarded by court and costs first.
 - e. They appealed out of time and have made no effort to have the appeal concluded.
 - f. We pray that the application be dismissed with costs to the respondent.
4. The parties filed their respective submissions. The Court has considered parties' respective positions and returns as follows.
5. The 1st issue is whether the application is premature. It is urged for the claimant that the application is premature because execution will not issue until costs are taxed. The respondent has not answered to the issue and the Court returns for the claimant.
6. The 2nd issue is whether substantial loss has been established for the applicants if the money is paid to the claimant. The claimant is still in the applicants' employment. The claimant states that it should be possible for the applicants to recover the money should the appeal be successful. Further, if any stay is to be granted, the applicants should deposit the money for prompt settlement of the decree should the appeal fail. The applicants state that the University is a big state corporation with huge asset base for execution of the decree should the appeal fail. The law is that security be provided as a prerequisite to granting of the order of stay of execution. The Court considers that there be stay of execution pending determination of the appeal in issue subject to the 1st applicant depositing the full decretal sum plus costs to be taxed by 01.08.2024 in a joint interest earning account in the names of



the parties' advocates. While making that finding the Court has considered the government budgetary cycle and the decretal amount of money involved as well as the time lapse prior to determination of the costs through taxation.

7. To answer the 3rd issue, the Court finds that a balance of justice should be achieved if the decretal sum is deposited as already found. The issue of substantial loss does not then arise because the applicant has submitted that the deposit should be sufficient in the circumstances of the case.

In conclusion, the application is hereby determined with orders:

- a. There be stay of execution pending determination of the appeal in issue subject to the 1st applicant depositing by 01.08.2024, the full decretal sum plus costs to be taxed, in a joint interest earning account in the names of the parties' advocates.
- b. The 1st applicant to pay costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

