



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO E157 OF 2021

SECURITY SEVEN LIMITED.....APPLICANT

VERSUS

SARAH OCHUNYI OKUKU.....RESPONDENT

RULING

1. By his application brought by Notice of Motion dated 9th September 2021, the Applicant seeks stay of execution of the judgment delivered by Hon D.O Mbeja on 23rd July 2021 in *CMEL No. 1215 of 2019: Sarah Ochunyi Okuku v Security Seven Limited*.
2. The Applicant further seeks leave to file an appeal out of time.
3. The application is supported by an affidavit sworn by the Respondent's Human Resource Manager, Boniface Mbuthia Irungu and is based on the following grounds:
 - a) That the judgment in *CMEL No. 1215 of 2019: Sarah Ochunyi Okuku v Security Seven Limited* was scheduled for 9th July 2021 and on the said day, the Court informed Counsel in the matter that judgment was not ready and would be delivered on 16th July 2021;
 - b) That on 16th July 2021, the Court informed Counsel that the judgment was partly done and would be delivered on 20th July 2021. On 20th July 2021, the case was not cause listed and judgment was not ready and hence not delivered on this day. No directions were given on the anticipated date of delivery of the judgment;
 - c) That Counsel for the Applicant kept on checking with the Court and with the Court Registry to know when judgment would be delivered but in vain;
 - d) That the Applicant was served with Warrants of Attachment on 2nd September 2021 by the Mbeki Auctioneers;
 - e) That the said Auctioneers took an inventory of the Applicant's property;
 - f) That prior to instructing the Auctioneers, the Respondent's Counsel did not write to the Applicant's Advocates informing them of the delivery of the judgment in their absence and a copy of the judgment or the decree has not been served upon the Applicant;
 - g) That the Advocates for the Applicant learnt of the judgment when the Applicant was served with Warrants of Attachment on 2nd September 2021;
 - h) That execution against the Applicant will commence any time;
 - i) That the Applicant has an arguable appeal with a high prospect of success and it is in the interest of justice that there be a stay of the judgment in *CMEL No. 1215 of 2019: Sarah Ochunyi Okuku v Security Seven Limited*, pending the hearing and determination of the intended appeal;
 - j) That the intended appeal shall be rendered nugatory and an academic exercise if the execution is allowed to succeed;
 - k) That if stay of execution is not granted, the Respondent will levy execution against the Applicant in an effort to recover the

amount under the decree;

l) That substantial loss will result to the Applicant if the orders sought are not granted;

m) That the Applicant is ready and willing to deposit part of the decretal amount in court as security and to abide by any condition issued by the Court;

n) That the Respondent has no known stable source of income and there is a likelihood that if the amount under the decree is paid out, it might not be recovered in case the appeal succeeds as against the Respondent and therefore making the Applicant suffer irreparable damage;

o) That the Respondent is unlikely to suffer any prejudice should the orders sought be granted;

p) That the application has been made without unreasonable delay;

q) That the application ought to be allowed in the interest of equity and justice.

4. The Respondent's response is via a replying affidavit sworn by her Counsel, Willis Wetaba Nanjendo.

5. Counsel depones that judgment in the matter was delivered on 23rd July 2021 and the Applicant was absent although there was a notice deferring matters in which judgment was to be delivered on the date declared a public holiday.

6. Counsel deems the current application as a ploy to keep the Respondent from enjoying the fruits of her judgment.

7. He states that if the Court is minded to grant stay of execution, it should be conditional upon the decretal sum being deposited in an interest earning account in the joint names of the parties' Advocates or in court.

8. Boniface Mbuthia Irungu swore a supplementary affidavit on 8th November 2021 stating that the Applicant is currently not in a position to deposit the whole of the decretal amount as it is having financial difficulties due to the effects brought about by COVID-19.

9. In his replying affidavit, the Respondent does not oppose the Applicant's plea for stay of execution but insists that the entire decretal sum be deposited either in a joint interest earning account in the names of the parties' Advocates or in court.

10. This is a reasonable proposition because if the Applicant is apprehensive that the Respondent would not be in a position to refund the decretal sum if the appeal succeeds, the Respondent must also be concerned about recouping the fruits of her judgment if the appeal fails. What is good for the goose is equally good for the gander.

11. In the result, I allow the Applicant's application in the following terms:

a) Leave to appeal out of time is granted;

b) There shall be stay of execution of the judgment delivered by Hon D.O Mbeja on 23rd July 2021 in *CMEL No. 1215 of 2019: Sarah Ochunyi Okuku v Security Seven Limited* subject to the condition that the Applicant shall deposit the entire decretal sum in an interest earning account in the joint names of the parties' Advocates within the next forty-five (45) days from the date of this ruling;

c) Failure to adhere to the foregoing condition will lead to an automatic lapse of the stay hereby granted.

12. The costs of this application will be costs in the appeal.

13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JANUARY 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyabena for the Applicant

Mr. Wetaba for the Respondent