



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

APPEAL NO. E024 OF 2021

SGA GUARDING LIMITED.....APPLICANT

VERSUS

CHRISPINUS AMBANI MWANJE.....RESPONDENT

RULING

1. The Applicant herein, vide an application dated 2nd July, 2021, premised on the provisions of Sections 1A, 1B & 3A of the Civil Procedure Act, Rule 17 of the Employment and Labour Relations Court (Procedure) Rules and Order 42 Rule 6 of the Civil Procedure Rules, seeks a stay of execution of the Judgment and Orders of Hon. W.K Onkuya, Senior Resident Magistrate made on 18th June, 2021.
2. The Respondent, vide the Judgment of the court referred to herein, was awarded Kshs. 688,128/=, Costs of the suit and interests thereon.
3. The Applicant being aggrieved, lodged an appeal against the Judgment, arguing that the Honourable Trial Magistrate erred in allowing the Claimant's claim, even after the Respondent admitted absconding duty in the year 2013.
4. The application is opposed through the Respondent's grounds of opposition dated 28th July, 2021 and filed in Court on 19th August, 2021. Parties canvassed the application through written submissions.
5. The submissions were received from both parties and have been duly considered.

Analysis and Determination

6. I have considered the application, the grounds in support and the supporting affidavit, together with the Respondent's grounds of opposition and the Parties' submissions. The issue for determination is whether the application meets the threshold for grant of orders of stay of execution.
7. Order 42 Rule 6 of the Civil Procedure Rules, provides as follows in respect of stay of execution:

“(2) 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 as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

8. It is in the discretion of the Court to grant or decline a prayer for stay of execution. In exercising this discretion, the Court is guided by the provisions of Order 42 Rule 6, which require that a party seeking this order, ought to demonstrate to the court that they stand to suffer substantial loss, the application has been lodged without undue delay and their preparedness to provide security as the Court may order. The court will also grant a stay of execution where special circumstances of the case so require, per Lopes LJ in the case of **Attorney General v Emerson and Others 24 QBD (1889) 56 at p 59**.
9. The award subject of this ruling, is Kshs. 688,128/-. The amount is substantial, and the Respondent has not demonstrated his ability to repay the same should the Applicant's appeal succeed.
10. The judgment was delivered on the 18th June, 2021, and the instant application for stay orders filed on 5th July, 2021, which is less than a month after the judgment subject of this ruling. I would safely say that the application was filed without unreasonable delay.

11. The purpose of stay orders is to prevent the appeal if successful, from being rendered nugatory, per **Brett, LJ in Wilson v Church (No 2) 12 Ch D (1879) 454 at p 459**. In this case, Cotton LJ said at p 458:

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

12. In the absence of other overwhelming hindrances, I grant a stay of execution of the Judgment and Orders of Hon. W.K Onkuya, Senior Resident Magistrate made on 18th June, 2021.

13. I further order that the Applicant herein deposits Kshs. 300,000/= as security within 30 days of the delivery of this ruling, in default, the order of stay shall lapse.

14. The costs of this application shall abide the appeal.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 17TH DAY OF FEBRUARY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Achieng for the Applicant

N/A for the Respondent

Christine Omollo – C/A