



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**ELRC APPEAL NO. E037 OF 2021**

**ROY PARCEL SERVICES LIMITED.....APPELLANT**

**VERSUS**

**PAUL ONYANGO ABIERO.....RESPONDENT**

**RULING**

1. By a Notice of Motion dated 9<sup>th</sup> November, 2021, the Applicant herein, Roy Parcels Services Limited, seeks the following orders:
  - i. Spent
  - ii. Spent
  - iii. That there be stay of execution of the decree herein pending the hearing and determination of the appeal in KISUMU ELRC APPEAL NO. 037 OF 2021 ROY PARCEL SERVICES LIMITED V PAUL ONYANGO ABIERO.
  - iv. That costs of this application be provided for.
2. The application is supported by the grounds on the face of the Motion, and an affidavit sworn by one **Kenneth Waithaka**.
3. The Appellant's case is that the Respondent obtained judgment against her and being aggrieved, she filed an appeal against the said judgment which she asserts is meritorious and has high chances of success.
4. The Appellant states that the Respondent was already issued with an attachment warrant and has gone ahead to proclaim the Appellant's properties. She further states that by dint of the turn of events in the matter, she will suffer irreparable loss if the execution is allowed to proceed.
5. The Appellant states that the amount involved is colossal and the Respondent/decreed holder will not be able to repay. The Appellant further avers that allowing this application will not prejudice the Respondent in any way.
6. The application is opposed vide grounds of opposition of 22<sup>nd</sup> November, 2021, wherein, the Respondent/Decree holder states that the application is misconceived, frivolous, vexatious and totally misplaced as no grounds have been advanced to warrant the granting of the orders sought.
7. It is submitted for the Respondent/Decree holder that he is a jobless citizen and stands to suffer great prejudice if the decretal sum together with costs and interests is not released to him.
8. Both Parties filed submissions in the matter and which have been dully considered.

**Determination**

9. I have carefully appraised the application, the affidavits sworn by both parties and the submissions filed both in support and in opposition to the instant application. The legal principles that guide the court in determining an application for stay of execution of Judgment pending appeal, are as set out under Order 42 Rule 6 of the Civil Procedure Rules.

10. The Court's exercise of discretion in staying execution of a Judgment, is guided by the grounds set out in the case of **Stephen Wanjohi v Central Glass Industries Ltd Nbi HCCC No. 6726 of 1991** where the Court emphasized that:

***“For the Court to grant stay of execution there must be:***

***(a). Sufficient cause.***

***(b). Substantial loss.***

***(c). No unreasonable delay and security offered for due performance of the decree.”***

11. It is the duty of the applicant in such an application, being the burden bearer to demonstrate to the Court that her appeal is arguable. It is evident that the appeal subject of this application is premised on evidence yet to be introduced to court, yet no orders to that effect have been sought and/or granted. Holding execution in this matter will only mean that the Decree holder will be kept farther and farther from enjoying the fruits of his judgment.

12. The Appellant seeks to recall the Respondent/decreed holder for cross examination at appellate stage. She also intends to call new witnesses to testify in the matter. None of these has been justified.

13. The Appellant/Applicant has not made it clear whether the appeal is against the judgment of 10<sup>th</sup> May, 2021 or the Ruling of 8<sup>th</sup> September, 2021. In my view, the Appellant is on a fishing expedition and has not demonstrated sufficient cause to warrant the granting of stay orders.

14. The Appellant has also not indicated her willingness to deposit any security if demanded by the court, which legally, is a condition precedent to the grant of orders of stay.

15. In conclusion, the court finds and holds that the application dated 9<sup>th</sup> November, 2021, is without merit and is dismissed. The interim orders earlier granted are lifted.

16. The Appellant/Applicant shall bear the costs of the application.

17. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Mr. Waithaka present for the Claimant

N/A for the Respondent

Christine Omollo – C/A