



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
ELRC APPEAL NO. E092 OF 2021

AMUIRI INVESTMENTS LIMITED.....APPLICANT/APPELLANT

VERSUS

BENSON ASWANI.....RESPONDENT

(Being an appeal for stay of execution pending the lodging, hearing and

determination of the intended appeal against the judgment of the

Honourable A.M. Obura (Mrs) delivered on 19th August, 2021

in Civil Suit No. 1904 of 2019)

RULING

1. The applicant in the Notice of Motion Application dated 6th September, 2021 prays for an order in the following terms:-

(1). Spent

(2) Spent

(3) Spent

4. That there be stay of execution of the Judgment delivered by

Hon. A.M. Obura (Mrs) on 19th August, 2021 in Civil Suit No. 1904 of 2019 pending hearing and determination of the appeal.

2. The nub of the grounds set out by the applicant is that the judgment for a sum of Kshs 1,222, 383,85 was granted in favour of the respondent and the applicant has filed an arguable appeal with high chances of success before this Court.

3. The judgment is attached to the application together with a memorandum of Appeal setting out grounds of intended Appeal.

4. The applicant prays that the appeal shall be rendered nugatory if the interim orders are not granted. That they are ready to provide security for decretal sum as may be directed by the Court. That the appellants shall suffer substantial loss since the decretal sum is large if the orders sought are not granted.

5. The respondent filed a replying affidavit dated 20th September, 2021 in which they state that though the appellants have filed memorandum of appeal, there is no evidence that they have requested for certified copy of proceedings and judgment in order to prosecute the appeal.

6. That the applicant has not demonstrated that the appeal would be rendered nugatory if stay is not granted. That if stay is granted the same should be on condition that the decretal sum plus assessed costs be placed in an interest earning account.

7. That the respondent has filed a cross appeal seeking a further sum of Kshs.46,000 not awarded by the trial Court. That the Court should

balance the interest of the parties.

8. The Appellant filed a further affidavit stating that the application was filed timeously and there has been no delay at all. That they have made a request for certified copy of proceedings and judgment and have reached out to the advocates for the respondent with a view to have the decretal sum deposited in an interest earning account.

Determination

9. The parties have filed submissions which the Court has carefully considered together with the deposition by the parties.

10. The Court is well guided by the principles set out in **Butt –vs- Rent Restrictions Tribunal (1982) KLR 417**, in the exercise of the Court's discretion to grant stay of execution as follows:-

(i) The discretion should be exercised in such a way as not to prevent an appeal.

(ii) The general principal in granting or refusing a stay is, if there is no other overwhelming hindrances, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge's discretion.

(iii) A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.

(iv) The Court in exercising its powers under Order XL1, rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or of its own motion.

11. On the facts of this case, the Court is satisfied that the application is not visited by inordinate delay. That the intended appeal is arguable and the appeal may be rendered nugatory if stay is not granted and the appeal is successful.

12. Accordingly, the application is granted for stay of execution of the judgment delivered on 19th August, 2021 in the lower Court by **Hon. A.M. Obura (Mrs)** pending the hearing and determination of the intended appeal.

13. Further, the respondent is directed to deposit the decretal sum in a joint interest earning account in the names of the advocates for the parties within 30 days from the date of this ruling failing which the order for stay shall be automatically vacated.

13. The costs of the application shall be in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 3RD DAY OF FEBRUARY, 2022.

Mathews N. Nduma

Judge

Appearance

Mr. Nyaga for Petitioner

Mrs Kang'ethe for Respondent

Ekale – Court Assistant