



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC APPEAL NO. E005 OF 2022

VEEW DISTRIBUTORS LIMITED.....CLAIMANT

VERSUS

FRED MUSEMBI MUENI.....RESPONDENT

RULING

1. Application dated 13th January, 2022 seeks an order in the following terms:-

1. *Spent*

2. *Spent*

3. **THAT** the Honourable Court be pleased to grant a stay of execution as against the Judgment of the Nairobi Chief Magistrate's Court to wit; ***Nairobi CMEL No. 21 49 of 2019 – Fred Musembi Mueni –vs- Veev Distributors Limited***, pending the hearing and determination of the present Application.

4. **THAT** the Honourable Court be pleased to allow the intended Appeal to be filed out of time.

5. **THAT** the Honourable Court be at liberty to make such orders as it may deem fit and just to award.

6. **THAT** costs of the Application be provided for.

2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of the advocate handling the matter for the applicant the nub of which is that judgment was entered against the applicant in ***CMEL No. 2149 of 2019 – Fred Musembi Mueni –vs- Veev Distributors Limited***.

3. That the applicant erroneously filed an appeal at the High Court instead of filing same with Employment and Labour Relations Court (ELRC) being High Court Civil Appeal No. 700 of 2021.

4. That the respondent filed a Preliminary Objection at the High Court on the jurisdiction of the Court which is pending.

5. That the applicant is keen on prosecuting the Appeal and that the Court grants the orders sought.

6. The application is opposed by a replying affidavit of the respondent stating that judgment was delivered in the Magistrate's Court on 24th September, 2021 and the applicant was granted 30 days stay to organize payment of the decretal amount.

7. That when stay period lapsed, the applicant filed Milimani High Court Civil Appeal No. E700 of 2021 and an application for stay of execution and the applicant was granted 30 days stay.

8. That respondent filed Preliminary Objection and the applicant has since filed this case.

9. That the applicant is simply dragging the matter in Court to forestall execution and/or deny the respondent the opportunity to enjoy the fruits of his judgment.

10. That the application is an abuse of the Court process and it be dismissed.

Determination

11. The Preliminary Objection at the High Court is still pending and the HCCA Appeal No. 700 of 2021 is still pending at the High Court and has not been determined and/ or transferred to this Court by the High Court.

12. Clearly, it is the Court seized with the matter to decide to proceed with the hearing and determination of the same and/or transfer the same to this Court.

13. This Court lacks jurisdiction to enlarge time for a second appeal to be filed in this Court whilst there is another appeal on the same subject matter pending at the High Court.

14. This application is misconceived and an abuse of Court process and the same is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 17TH DAY OF MARCH, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Mwaniki for Applicant

Mr. Onyango for Respondent

Ekale – Court Assistant.