



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**APPEAL NUMBER EO43 OF 2021**

**BETWEEN**

**KEDAR BUILDERS LIMITED .....APPELLANT**

**VERSUS**

**ENOCK NZIVO SAMMY .....RESPONDENT**

**RULING**

1. The Appellant prays for an order of stay of execution of Judgment entered in favour of the Respondent on 25<sup>th</sup> March 2021, in Ruiru S.P.M.C ELRC No. 27 of 2019, pending hearing and determination of this Appeal.
2. The Trial Court found the Respondent's employment contract to have been unfairly terminated, and awarded compensation and terminal benefits at Kshs. 258,720.
3. The Appellant explains through the Supporting Affidavit sworn by its Advocate, Edna Brandy Wanja, that the Appellant has an arguable Appeal with high chances of success. A copy of the Memorandum of Appeal is exhibited.
4. The Application is opposed through the Grounds of Opposition dated 7<sup>th</sup> June 2021. It is stated without elaboration, that the Court does not have jurisdiction to deal with the Application. The Application is frivolous, vexatious and bad in law, and was filed after inordinate delay.
5. Also on record is a Replying Affidavit sworn by the Claimant's Advocate Lemmy Regau Nyawade, on 16<sup>th</sup> July 2021. He states that the Appellant has not established that it would suffer irreparable harm, if an order of stay is not granted. The Respondent would be prejudiced, as he has been out of employment since 8<sup>th</sup> June 2019, when he was summarily dismissed by the Appellant. In event the Court allows the Application, the Respondent's Counsel proposes that the full decretal amount is deposited in Court, or half of it is released to the Appellant unconditionally.
6. Parties agreed to have the Application considered on the basis of Written Submissions.

**The Court Finds:** -

7. It is noted that the complete Record of Appeal has already been filed, and hearing of the Appeal should take place within the next few months.
8. That noted, the right of the Appellant to prosecute its Appeal, must be weighed against that of the Respondent, to enjoy the product of his litigation.
9. He has been out of employment since 2019.
10. The Court agrees with his Advocate, that he ought to have part of the decretal sum, even as the Appellant prosecutes the Appeal.
11. The Respondent is cautioned however, that in event the Appeal is successful, any amount received by him, shall be refundable to the Appellant.

IT IS ORDERED: -

- a. Execution of Judgment and Decree in Ruiru S.P.M ELRC Case No. 27 of 2019, is stayed pending hearing and determination of the Appeal.*
- b. Stay is granted on the condition that the Appellant pays 50% of the sum awarded by the Trial Court- Kshs. 126,720- to the Respondent, within 7 days of this Ruling.*
- c. Costs in the Appeal.*

**DATED, SIGNED AND RELEASED TO THE PARTIES AT MOMBASA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 4TH DAY OF MARCH 2022.**

**JAMES RIKA**

**JUDGE**