



**Security Seven Limited v Okuku (Miscellaneous Civil Application
E157 of 2021) [2022] KEELRC 1311 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1311 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E157 OF 2021**

L NDOLO, J

MAY 19, 2022

BETWEEN

SECURITY SEVEN LIMITED APPLICANT

AND

SARAH OCHUNYI OKUKU RESPONDENT

RULING

1. On 27th January 2022, I allowed the Applicant leave to appeal out of time. I also granted stay of execution of the judgment delivered by Hon D.O Mbeja on 23rd July 2021 in CMEL No. 1215 of 2019:CMEL No. 1215 of 2019: Sarah Ochunyi Okuku v Security Seven Limited with the condition that the Applicant would deposit the entire decretal sum in an interest earning account in the joint names of the parties' Advocates within forty-five (45) days from the date of the ruling.
2. The Applicant did not comply with the foregoing condition but instead filed another Notice of Motion dated 10th March 2022, seeking variation of the condition of stay of execution to allow for deposit of the decretal sum in instalments. The Applicant also offered Title Deed Number Segera Segera Block 2/23/3917 (Mbugiongai) in the name of Shaziya Yusuf Kassam to be held in court pending deposit of the entire decretal sum in a joint interest earning account.
3. The application is supported by an affidavit sworn by Ruksana Shabir Isak Ismail, a director of the Respondent Company and is based on the following grounds:
 - a) That on 27th January 2022, the Court delivered its ruling in an application seeking stay of execution and directed that the Applicant deposits the decretal sum in an interest earning account within 45 days from the date of the ruling;
 - b) That the Applicant has tried all it can to get the decretal amount of Kshs. 1,646,041 but has not succeeded;



- c) That the Applicant seeks review and variation of the orders of 27th January 2022 to allow the Applicant to deposit the decretal amount by an initial instalment of Kshs. 300,000 and thereafter in monthly instalments of Kshs. 100,000;
 - d) That the Applicant is a business entity and faces a real threat of its entire business operations being greatly compromised if the orders sought herein are not granted;
 - e) That the Applicant has availed its financial statements for the year ended 31st December 2020 to show its financial state;
 - f) That the Applicant has also availed Title Deed Number Segera Segera Block 2/23/3917 (Mbugiongai) in the name of Shaziya Yusuf Kassam, a friend of the Applicant's director;
 - g) That the Application has been made timeously.
4. In opposition to the application, the Respondent filed her replying affidavit sworn on 21st March 2022.
 5. The Respondent terms the application as incompetent and without merit.
 6. She states that the Applicant ought to have provided a valuation and a recent search of the title deed it seeks to offer as holding security.
 7. The Respondent expresses her apprehension about the Applicant's ability to settle the decretal amount in the event that the judgment is upheld on appeal.
 8. In a supplementary affidavit sworn on 28th March 2022, Ruksana Shabir Isak Ismail states that the Applicant is willing to provide a valuation and search of the title deed it seeks to offer as part of security.
 9. The application was urged by way of written submissions. Both parties however proceeded on the wrong principles. In its submissions, the Applicant proceeded as if the application before the Court was on liquidation of the decretal sum in instalments while the Respondent proceeded on the basis of review as provided by Rule 33 of the Procedure Rules of this Court.
 10. On the contrary, what is actually before the Court is an application seeking variation of the conditions of stay of execution granted by the Court on 27th January 2022. In this regard, the Applicant asks the Court to allow it to deposit the decretal sum in instalments. In light of the amount of the decretal sum, if the Court were to accede to the Applicant's plea, it would take more than a year for the decretal sum to be fully deposited. This in my view is an unreasonable proposition.
 11. Regarding the offer of a title deed as holding security I will say this; the Applicant, instead of offering its own property, has chosen to offer a property belonging to a friend, who is not a party in these proceedings. What is more the value and encumbrance status of the property has not been disclosed.
 12. The purpose of an order for deposit on security, which is provided for under Order 42 Rule 6 of the Civil Procedure Rules, is to protect the interests of all parties. The Applicant's conduct, while aimed at securing its own corner, does not disclose any intention to extent the same cover to the Respondent.
 13. The Applicant has therefore failed to make a case for review of the conditions of stay of execution set by the Court on 22nd January 2022. The application dated 10th March 2022 is consequently declined with costs in the appeal.
 14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MAY 2022

LINNET NDOLO



JUDGE

Appearance:

Mr. Nyabena for the Applicant

Mr. Wetaba for the Respondent

