



REPUBLIC OF KENYA



KENYA LAW
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**Saoke v Robinson Security Group t/a Robinson Investment Limited
(Cause 291 of 2016) [2022] KEELRC 1639 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1639 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 291 OF 2016
HS WASILWA, J
JUNE 9, 2022**

BETWEEN

LUCAS ONYANGO SAOKE CLAIMANT

AND

**ROBINSON SECURITY GROUP T/A ROBINSON INVESTMENT
LIMITED RESPONDENT**

RULING

1. Before me for determination is the respondent/applicant's application dated December 10, 2021 and filed on the December 14, 2021. It is brought pursuant to order 42 rule 6 & 7 of the *Civil Procedure Rules* 2010 and all other enabling provisions of law seeking for the following orders; -
 - a. That this honourable court be pleased to stay execution of the Decree that has been issued in respect of the judgement entered herein on September 28, 2021 and any other order that may be issued pursuant thereto, pending appeal.
 - b. That the cost of this application be provided for.
2. The basis upon which the application is brought is that the applicant has already preferred an appeal against the decree of this court vide Civil Appeal Number E107 of 2021 which appeal has reasonable chances of success.
3. That the applicant is apprehensive that if the stay orders are not granted the claimant/respondent will proceed with execution rendering its appeal nugatory. It further stated that, it is willing to provide a bank guarantee for the judgement sum and in the alternative deposit the decretal sum or half of the said decretal sum in an interest earning account, jointly registered in the name of the parties Advocates.
4. He concluded that the application has been filed without delay and therefore ought to be granted in the interest of Justice.



5. The application herein is also supported by the affidavit of the applicant deposed upon by Agnes Rutinu, the applicant's director, on the December 10, 2021.
6. The claimant/respondent herein opposed the application and filed his replying affidavit sworn on the January 28, 2022.
7. According to the respondent the application herein is frivolous, vexatious and brought in bad faith, aimed at delaying the court process. He stated that section 1A of the Civil Procedure Act implores upon the court to dispose off matters in a just, expeditious and proportionate way.
8. He stated that the applicant has not met conditions pre-requisite for grant of stay of execution orders as provided for under order 42 rule 6 of the Civil Procedure Rules as it has failed to demonstrate the substantial loss it will incur incase stay is denied.
9. He stated that this court should balance between the right of the applicant to appeal and his right to enjoy fruits of the judgement he rightfully acquired. He further stated that he is a man of means who if the appeal goes against him will be able to refund the Applicant the decretal sum.
10. Without prejudice, the respondent states that incase the court is inclined to allow the application, the Applicant be compelled to deposit the entire decretal sum in a joint interest earning account in the names of the parties Advocates.
11. The application was disposed of through written submission with the applicant filing on the April 20, 2022 while respondent opted to rely on the contents of his replying affidavit.

Applicant's Submissions

12. The applicant submitted that the court's discretion to grant stay of execution orders is vetted by three conditions; firstly, the applicant must establish a sufficient cause, secondly satisfy the court that substantial loss would ensue and thirdly, the applicant must furnish security. It reinforced its argument by citing the case of Halai and another v Thorton & Turpin (1963) Limited [1990] KLR 365.
13. On the first condition, the applicant submitted that they have an appeal with immense chances of success and if stay will not issue, the respondent will levy execution and rendered their appeal nugatory which will immensely prejudice them and cause them substantial loss. Furthermore, that the judgement is of a colossal sum which might not be recovered noting that the claimant/ respondent financial muscle is unknown. it was argued further that the respondent when given an opportunity to disclose his financial worth failed to do so in his replying affidavit. He relied on the case of Amal Hauliers Limited v Abdulnasirabukar Hassan [2017] eKLR.
14. On whether the application was made timeously, it was submitted that judgement was delivered on the October 28, 2021 while this application was made on December 10, 2021 and the Appeal filed on the November 16, 2021, demonstrating that the delay was not inordinate in the circumstances.
15. On security, the applicant submitted that it is willing to furnish this court with bank guarantee as security for due performance of the decree.
16. It was further submitted that the appeal number E107 of 2021 raises triable issue with high chances of success as such, he urged that the court do allow the stay application in the interest of justice.
17. I have examined the averments and submissions filed herein.



18. Order 42 rule 6(2) of the CPR states as follows;-

“(2) No order for stay of execution shall be made under subrule (1) unless—

(a) the Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”

19. Under this order no stay can be granted unless the listed 2 conditions are met.

20. In this case the application for stay was filed timeously on 14/12/21 after the Judgment was made on September 28, 2021.

21. The applicant has gone ahead and filed a notice of appeal.

22. It is apparent that if the stay prayer is denied, the appeal would be rendered as academic exercise.

23. I therefore exercise my discretion and allow the stay of execution order prayed for on condition that the applicant deposits the entire decretal sum in a joint interest earning account held in joint names of counsels on record within 60 days.

24. In default execution may proceed.

25. Costs in the cause.

RULING DELIVERED VIRTUALLY THIS 9TH DAY OF JUNE, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Ms. Oseko holding brief for Mr. Githui for the Respondent – present

Awuor for Claimant – present

Court Assistant - Fred

