



**Sum v Agriculture and Food Authority (Employment and Labour Relations  
Claim E019 of 2021) [2022] KEELRC 3847 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3847 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CLAIM E019 OF 2021**

**HS WASILWA, J**

**JULY 28, 2022**

**BETWEEN**

**KEFA STANLEY ORWA SUM ..... CLAIMANT**

**AND**

**AGRICULTURE AND FOOD AUTHORITY ..... RESPONDENT**

**RULING**

1. Before me for determination is the Respondent/Applicant's Notice of motion dated 8<sup>th</sup> June, 2022 filed under certificate of urgency on the 13<sup>th</sup> June, 2022 and brought pursuant to Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act* and all other enabling provisions seeking the following orders;
  1. Spent.
  2. That there be stay of execution of the judgement of this Honourable Court delivered on the 17<sup>th</sup> May, 2022 and any other consequential Orders pending the hearing and determination of this Application inter partes and its determination.
  3. That there be stay of execution of the judgement of this Honourable Court delivered on the 17<sup>th</sup> May, 2022 and any consequential Orders pending the hearing and determination of the Intended Appeal.
  4. That the costs of this Application be provided.
2. The application is supported by the grounds on the face of the application and the affidavit of Kibwana Mataka, the Respondent's Human Resource manager, deposed upon on the 8<sup>th</sup> June, 2022 and based on the followings grounds; -
  - a. That Judgement in this case was delivered in favour of the claimant as against the Respondent on the 17<sup>th</sup> May, 2022 for payment of the sum of Kshs 924,000 plus costs and interest.



- b. The Applicant/Respondent was dissatisfied with the judgement of the Court and intends to file an Appeal and had filed a Notice of Appeal dated 26<sup>th</sup> May, 2022.
  - c. They also sought for typed proceedings by the letter of 26<sup>th</sup> May, 2022 to enable them prepare their Memorandum and record of appeal.
  - d. While awaiting the said proceeding, the claimant drew and filed its Bill of costs dated 14<sup>th</sup> June, 2022 pending for taxation by the Deputy Registrar, which upon taxation will be ripe for execution.
  - e. The Applicant is apprehensive that the claimant will proceed to execute the decree and taxed costs, when they are dissatisfied with the decree and have lodged an appeal, which will be rendered nugatory when the said Appeal has high chances of success.
  - f. The Applicant avers that he's willing and ready to furnish such security for costs as the Court May Order.
  - g. It prayed for the application to be allowed in the interest of justice as the same would not prejudice the claimant.
3. In opposing the application, the Claimant/ Respondent herein filed a replying Affidavit deposed upon on the 24<sup>th</sup> June, 2022 and states that application herein is frivolous, vexatious, scandalous and an abuse of Court process as it is only meant to delay him from enjoying his fruits of judgment.
  4. He avers that the judgement delivered by the Court was well reasoned and applicant herein has not satisfied the conditions under Order 42 Rule 6(2) of the Civil Procedure Rules, pre-requisite to granting stay of execution Orders such as establishing sufficient cause for delay, demonstrating substantial loss that will occur and furnishing of security for costs.
  5. He stated that the issue of substantial loss is crucial and the party alleging it must demonstrate as was held in *Republic V Commissioner for Investigations and Enforcement Ex parte Wananchi Group Kenya Limited* [2014] eKLR.
  6. Variably, that he is a man of means, having served the Applicant as a manager for market research and product development for 30 years and thus able to refund the decretal sum if the Appeal succeeds.
  7. The Claimant avers that the Applicant has failed to annex a copy of draft Memorandum of Appeal to demonstrate the viability of the Appeal and for this Court to satisfy itself that the appeal is an arguable one. This omission, according to the Claimant, is fatal and thus the court cannot grant the stay of execution without perusing through a copy the draft memorandum of Appeal.
  8. On security of costs, it was stated that the Applicant has not furnished this Court with security for costs when the same is a requirement, before an order of stay of execution is given.
  9. The claimant prayed for the application herein to be dismissed with costs to him and for the taxation and execution thereafter to proceed to its logical conclusion.
  10. Direction were given for the application to be disposed of by way of written submissions, however parties opted to rely on the affidavits and evidence annexed in each affidavit.
  11. I have examined the averments of the parties herein.
  12. The applicant avers that they have sought stay because they are dissatisfied with the Judgment of this court dated 17<sup>th</sup> May, 2022. They indicate they have already filed a Notice of Appeal which I find they have one dated 26<sup>th</sup> May, 2022.



13. In the circumstances of the case and given that the Notice of Appeal serves as an “Appeal” in principle, denying this application may render the appeal an academic exercise if at the end of it, the appeal is allowed.
14. I will therefore exercise my discretion and allow this application on the condition that the respondent deposits in a joint interest earning account held in the joint names of Counsels on record the entire decretal sum plus costs within 60 days.
15. In default execution may proceed.

**RULING DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF JULY, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of:-

Opar for Respondent – present

Orege holding brief for Kabalika for Applicant – present

Court Assistant – Fred

