



**Muia v Greenpot Enterprises Limited (Cause 770 of 2017)
[2022] KEELRC 1719 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1719 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 770 OF 2017
MA ONYANGO, J
JULY 22, 2022**

BETWEEN

ALLOISE NGUGI MUIA CLAIMANT

AND

GREENPOT ENTERPRISES LIMITED RESPONDENT

RULING

1. Judgment in this suit was delivered on November 13, 2020. The Court awarded the Claimant the sum of Kshs 536,577/-costs and interest. A decree was issued on May 18, 2021 and a Certificate of Costs issued on May 26, 2021.
2. Being aggrieved by the judgment the Respondent/Judgment Debtor filed an application dated June 9, 2021 seeking stay of execution among other prayers. The application was however withdrawn on June 17, 2021 following a Notice of Preliminary Objection filed by Counsel for the Decree Holder as the advocates who filed the application were not properly on record.
3. The judgment debtor thereafter filed the instant application dated June 22, 2021 in which it seeks the following orders:
 - i. Spent.
 - ii. That the firm of A.A Mudanya & Co. Advocates be granted leave to formally come on record as Advocates for the Respondent/Applicant herein place of L.M Kambuni & Associates Advocates.
 - iii. That there be an order of stay of execution of the judgment, decree and all consequential orders herein pending the hearing and determination of this application inter partes.



- iv. That there be a stay of execution of the judgment, decree and all consequential orders herein pending the hearing and determination of the Respondent/Applicant's Appeal to the Court of Appeal.
 - v. That pending the hearing and determination of this Application inter-partes, this Honourable Court be pleased to stay the Proclamation of /Attachment Notice dated 18th June 2021.
 - vi. That costs of this application be provided for.
4. In the grounds in support of the application and the supporting affidavit of Carolyn Wangui Kariuki the Applicant states that the application is filed without undue delay, that the Applicant has an arguable appeal with high chances of success, that the Decree Holder is a man of straw who will not be capable of refunding the decretal sum should the appeal succeed and that the Applicant will suffer irreparable loss and damage should the orders sought not be granted.
 5. The Applicant avers that the Decree Holder stands to suffer no prejudice and that it is ready to abide by any reasonable conditions in terms of security as may be ordered by the Court.
 6. Caroline Wangui Kariuki deposes that the advocates for the decree holder have demanded payment of the decretal sum by letter dated May 27, 2021 and by proclamation of attachment notice dated June 18, 2021 threatened to attach and sell the Applicant's property within 14 days.
 7. The Applicant avers that it filed a Notice of Appeal dated November 18, 2021 and also wrote to Court on the same day seeking certified copies of judgment and decree and certified copies of typed proceedings.
 8. In a replying affidavit sworn on July 5, 2021, Allice Ngugi Muia the Decree Holder deposes that the application is unmeritorious and is brought in bad faith as it was only filed after he commenced execution process.
 9. That the application is brought seven months after judgment and since filing the notice of appeal and letter seeking typed proceedings and judgement, the Applicant has not demonstrated any attempt to follow up on the same.
 10. That he is not a man of straw as he has rented a house where he pays rent of Kshs 72,500/- every month as demonstrated in the lease agreement appended to his affidavit and he owns a motor vehicle as is evident from the motor vehicle log book attached to his affidavit. He further attached his degree certificate from Kenyatta University to demonstrate that he is not a man of straw.
 11. He deposes that the rights of the judgment debtor must be balanced against his rights as a successful party entitled to enjoy the fruits of his judgment. That should the Court grant the orders sought in the application the Applicant should be ordered to pay him 50% of the decretal sum.
 12. The application was disposed of by way of written submissions.
 13. The legal threshold for grant of orders of stay of execution is provided for in Order 42 Rule 6 the [Civil procedure Act](#) as follows –
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem



just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

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
 - b. that the application has been made without unreasonable delay; and
 - c. 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.
14. The decree sought to be stayed is a money decree. The Applicant must therefore convince the Court that if the decree is executed it will suffer substantial loss and/or that the appeal will be rendered nugatory. The mere statement that the decree holder is a man of straw is not sufficient to deny the decree holder the fruits of his judgment.
15. In the instant case the decree holder has demonstrated that he is well educated, lives in a house where he pays rent of Kshs 72,500/- per months as per the lease agreement and owns a motor vehicle. He is thus not a man of straw.
16. This is contrasted with the Respondent who after delivery of judgment on November 13, 2020, took no action until threatened with execution in June 2021 to file the instant application. It is also noted by the Court that after the alleged filing of the Notice of Appeal and the alleged application for certified copies of decree, judgment and typed proceedings by letter dated November 18, 2020, the Respondent has done absolutely nothing towards prosecution of the appeal.
17. The notice of appeal submitted with the application is not signed by the instant Court as is evident on the face thereof. I have carefully perused the Court record and the same is not reflected as having been filed and/or paid for. Indeed, there is no copy in the Court file of either the Notice of Appeal or the letter seeking the certified copy of judgment, decree and typed proceedings.
18. The Court has wide discretion to order stay of execution as was stated in the case of *Butt v Rent Restriction Tribunal* [1979] eKLR in the following terms:

“The court said that the power of the court to grant or refuse an application for a stay of execution is a discretionary, and the discretion should be exercised in such a way as not to prevent an appeal. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge’s discretion. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings. Finally, the court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.”
19. In *Philip Mutinda v Lady Lori (K)* [2021] eKLR the Hon Judge summed up what should guide the exercise of the discretion. While quoting Ringera J, with approval in the case of *In Re Global Tours & Travel Ltd* HCWC No 43 of 2000 (unreported) the court stated that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the



interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matter, it should bear in mind such factors as the need for expeditious disposal of case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

20. In the instant application, as I have observed above, there is no Notice of Appeal on record. The Notice of Appeal annexed to the affidavit in support of the application is not signed by the Deputy Registrar. There is no evidence that it was ever presented or received by the Court. There is therefore no evidence that the same was filed.
21. As pointed out above, the Applicant, apart from allegedly writing the letter dated November 18, 2020, has not taken any further steps in respect of obtaining certified copies of judgment, decree and typed proceedings for purposes of lodging the appeal.
22. The implication of the foregoing is that there is no appeal to warrant stay of execution pending appeal. Stay of execution pending appeal can only be granted where an appeal has been lodged. In this respect a Notice of Appeal is defined in the Court of Appeal Rules to include an intended appeal, as signified by a Notice of Appeal No application has been made to lodge the Notice of Appeal out of time.
23. For these reasons I find the application herein without merit and dismiss the same with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND DAY OF JULY 2022

MAUREEN ONYANGO

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE

