



**Mayieka & 22 others v Judicial Service Commission (Cause
260 of 2016) [2022] KEELRC 1242 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1242 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 260 OF 2016
HS WASILWA, J
JULY 21, 2022**

BETWEEN

NICHOLAS MAYIEKA & 22 OTHERS PETITIONER

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

RULING

1. Before this Court for determination is the Petitioner's Application dated 18th May, 2022 seeking he following Orders; -
 - a. That the Court be pleased to set aside the stay proceedings order issued in this matter on 17th May, 2022 and to issue the Summons earlier on issued to the chief Registrar of the Judiciary on 31st March, 2022 in Execution of the Judgement and decree of this Court.
 - b. That the cost of this Application be borne by the Respondent.
2. The application is based on the fact that on the 17th May, 2022, this matter was mentioned for the purposes of confirming service of the Summons to attend Court upon the Chief Registrar of the Judiciary (CRJ) as ordered by the Court on the 31st March, 2022. Of 2018
3. The advocate ceased of the matter Elisha Ongoya was held up in Supreme Court Appeal Number 1 and instructed Bryan Katan to hold his brief. When the matter was mentioned, the advocate for the Respondent indicated to the Court that the matter is before the Court of Appeal and that this case should not proceed and considering that the advocate for the petitioner, holding brief, did not have instruction could not give any direction as such stay Orders was ordered by this Court.
4. It is contended that these stay Orders were obtained by the Petitioner without proper application. Further that the Respondent's advocate took advantage of lack of instruction by the advocate holding brief to obtain the said Stay orders.



5. It is also stated that the Respondent has sought stay Orders in the Court of Appeal which applications were neither certified urgent nor granted. Also that stay Orders sought in other related matter being in Court of Appeal Civil Application number 117 and 118 of 2017 were all declined and the Respondent settled the claims.
6. That there is similar application at the Court of Appeal which is yet to be determined and to allow stay in this proceedings would be inconsistent with the principles of Expedious disposal of Disputes which is enshrined in the oxygen principle.
7. This Application is also supported by the Affidavit of Elisha Zebedee Ongoya deposed upon on 18th May, 2022.
8. In response to this Application, the Respondent filed a replying Affidavit deposed upon by Delbert Ochola, the advocate ceased of the matter on the 27th June, 2022.
9. The affiant herein avers that on the 17th May, 2022 when this matter was mentioned, he was the one that appeared holding brief of his colleague Ms. Arriela Saina, the advocate in conduct of this matter.
10. The affiant denied misleading the Court or taking advantage of his counterpart but that he informed the Court that there is a stay Application pending before the Court of Appeal and he simply sought for time to enable Court of appeal determine the stay Application. He maintains that no stay of proceedings order was issued by the Court but only a mention of 20th September, 2022.
11. He stated that since no stay orders were granted by the Court there is nothing to be set aside by this Court and the Application herein is misleading and ripe for dismissal.
12. The application was disposed of by way of written submissions with the Petitioner/Applicant filing on the 30th June, 2022, while the Respondent filed their on the 27th June, 2022.

Applicant's Submissions.

13. The gist of the applicant's submission is that the Respondent sought for stay Orders in oral Application made on 17th May, 2022 when they ought to have made filed proper application in Court to be heard interpartes and determined. It was argued that the basis upon which the Respondent was granted stay Orders was on the fact that they had the matter pending before the Court of Appeal. He then argued that just because a matter is filled in Court of Appeal does not automatically operate as stay as stated in Rule 5(2) of the *Court of Appeal Rules*.
14. It was submitted that the Respondent's stay application which was filed by the Respondent is pending before the Court of Appeal and the same Court declined two other stay applications touching on the matter as such the stay Orders granted by this Court are prejudicial to the Petitioner who was in the process execution to realize and enjoy his fruits of Judgement.
15. The Applicant urged this Court to set aside the stay Orders issued therein and allow execution proceedings to proceed.

Respondent's Submissions.

16. The Respondent maintain from the onset that there were no stay Orders issued by the Court on 17th May, 2022 and that the Court basically granted the parties mention date in September but did not stay proceedings herein. It was argued that Court cannot issue substantive orders during a mention. This was affirmed in the case of *Master Powers Systems Limited V Public Procurement Administrative Review Board & 2 others* [2021] eKLR.



17. Also in the case of *Rahab Wanjiru Evans V Easo (K) Ltd* where the Court cited the case of *Peter Adhiambo Agoro V Ann Kananu Mwenda & another; County Assembly of Nairobi and another (Interested parties)* [2020]eklr where the Court of Appeal opined that when a matter is scheduled for mention, Substantive issues cannot be heard unless by consent of parties.
18. Accordingly, it was submitted that the parties were not heard at all and stay Orders were never issued as alleged but only that the parties were granted a mention dated.
19. I have examined the averments of the parties herein. I note that on 17/5/22 this Court never issued any stay orders as indicated by the applicants.
20. The Court only directed a mention on 17/5/2022. The issue of stay orders never came up and so there is nothing to set aside here.
21. I note however that there are summons issued to Chief Registrar of the Judiciary on 31/3/22 which are still pending before me. I therefore find the application before me on issue of stay orders not being the true position and I dismiss it accordingly and will consider issues of the pending summons before Court.

RULING DELIVERED VIRTUALLY THIS 21ST DAY OF JULY, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Ngarua holding brief Ongaya for Applicants – present

Kiptotich holding brief for Saina for Respondent – present

Court Assistant - Fred

