



**Lintons Place Limited v Kamau (Appeal E064 of 2022)  
[2022] KEELRC 1287 (KLR) (12 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1287 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E064 OF 2022  
NZIOKI WA MAKAU, J  
JULY 12, 2022**

**BETWEEN**

**LINTONS PLACE LIMITED ..... APPELLANT**

**AND**

**STANLEY KARANU KAMAU ..... RESPONDENT**

**RULING**

1. The Appellant/Applicant seeks through the notice of motion application of June 10, 2022 for the following orders:-
  1. Spent;
  2. A stay of execution of the judgment issued on May 9, 2022 and its subsequent decree do issue pending the inter partes hearing and determination of the application for stay of execution pending appeal;
  3. Repossession of the Motor Vehicle registration number KDD 939D be given back to Lintons Place Ltd or its duly appointed/authorized agents pending the inter partes hearing and determination of the application for stay of execution pending appeal on condition of depositing the log book with the court;
  4. A stay of execution of the judgment issued on May 9, 2022 and its subsequent decree do issue pending the inter partes hearing and determination of the appeal;
  5. Repossession of the Motor Vehicle registration number KDD 939D be given back to Lintons Place Ltd or its duly appointed authorized agents pending the hearing and determination of the appeal on condition of depositing the log book with the court;
  6. The Costs of this Application of stay of execution be in the outcome of the appeal.



2. The Appellant supported the motion with an affidavit sworn by Dr. Joyce Gikunda a director of the Appellant. The deponent states that the Appellant stands to suffer irreparable loss should the vehicle be sold while the appeal herein is pending. It is asserted that the Respondent should not sell the vehicle since it is not known whether he would be able to make a refund of the sums ordered should the Court of Appeal find in favour of the Appellant.
3. The Respondent on his part asserts through his lawyer that the Appellant was required to demonstrate what substantial loss it may face should execution not be halted. It was deponed that the fact that the execution process has been set in motion of itself does not amount to irreparable loss. It was the Respondent's position that the Appellant has not demonstrated what arguable appeal it has as the draft memorandum of appeal contains mere denials and speculations. The Respondent asserts the Appellant has not met the established threshold for the grant of orders. The Respondent asserts that should the Court be inclined to grant the stay sought then it should be on the condition that the entire decretal sum of Kshs. 1,494,461/- be deposited as security.
4. The parties were to file submissions and at the time of writing this Ruling only the Appellant/Applicant had filed submissions.
5. In their submissions, the Appellant submits that the grant of stay is anchored on the premise that a stay pending appeal is intended to secure the substratum of the appeal pending the determination of the appeal. It is submitted that there is the risk of substantial loss if the stay is not granted. The Appellant submits that there would be a pyrrhic victory should the appeal succeed and the vehicle already attached has been sold. The Appellant submits that the whereabouts of the Respondent are unknown and should there be success on Appeal there would be no way to ensure recovery of the decretal sum. The Appellant argues that under Order 42 Rule 6 (2)(b) the requirement of deposit of security is discretionary as it is not mandatory prior to the grant of the stay pending appeal. The Appellant submits that it has over 30 outlets all over the country and that it has the capacity to meet the decree should the appeal not succeed. The Appellant submits that there is the option to deposit security which could be the title to the property to secure the due performance of the decree.
6. In a matter where stay of execution is at the core, a Court has to determine the rival facts and come to a determination as to whether to grant the stay or not and whether in granting the stay conditions should attach. In this case, the Appellant has made out a case that it has an appeal that would be rendered nugatory should the appeal succeed while the property subject of this stay application is sold in execution of the decree. I agree. There would be a pyrrhic victory should the Appellant succeed on Appeal yet the vehicle already attached has been sold in execution of the decree of the Court. In my considered view, a stay would be granted to forestall any such situation where the appeal is rendered merely academic. In the grant of stay, a court is enjoined to consider whether to grant conditional stay or not. In this case, the circumstances of the matter lend themselves for a conditional stay. The Appellant boasts of having over 30 outlets spread over the country and as such is in the view of the Court sufficiently liquid to deposit the entire decretal sum in an interest earning account to secure the rights of the Appellant should the Appellant succeed on appeal. The decretal sum of Kshs. 1,494,461/- must be deposited as security within 14 days of today as a condition for stay. Should the Appellant fail to deposit the sum in an interest earning account in the joint names of the advocates for the parties through no fault of the Appellant, execution may then proceed. As such the vehicle attached shall only be released upon securing the funds as ordered. Costs of the motion shall abide the outcome of the appeal. In the final analysis:-



- i. Stay is granted on condition that the Appellant deposits the entire decretal sum in an interest earning account in the joint names of the Advocates for the parties herein within 14 days of today.
- ii. In default the execution to proceed.
- iii. Costs of the motion shall abide the outcome of the Appeal.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2022**

**NZIOKI WA MAKAU**

**JUDGE**

