



**Kimosop v Kerio Valley Development Authority (Employment and Labour Relations Cause 54 of 2019) [2022] KEELRC 14646 (KLR) (17 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14646 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 54 OF 2019**

**NJ ABUODHA, J  
AUGUST 17, 2022**

**BETWEEN**

**DAVID KIPCHUMA KIMOSOP ..... CLAIMANT**

**AND**

**KERIO VALLEY DEVELOPMENT AUTHORITY ..... RESPONDENT**

**RULING**

1. By a motion dated February 16, 2022 the respondent/applicant sought orders among others that this court grants a stay of execution of its judgment delivered on February 4, 2022 pending the hearing and determination of an application to the Court of Appeal for stay of execution under rule 5(2)(b) of the [Court of Appeal Rules](#).
2. The application was supported by grounds among others that the applicant had filed a notice of appeal against the court's judgment in compliance with rule 75(1) of the [Court of Appeal Rules](#) manifesting its intention to challenge the Court's decision. The applicant further contended that the decretal sum was payable by the Kenyan Tax Payers by virtue of the respondent being a State Corporation pursuant to [Kerio Valley Development Authority Act](#). In the event the appeal succeeds, any money expended by the respondent in the furtherance of the decree, shall be expended contrary to the provisions of article 201(d) of [the Constitution](#).
3. The claimant/respondent opposed the application and filed a replying affidavit which in essence raised purely legal arguments fit for submissions. The respondent contended inter alia that the applicant in his prayer (c) of the motion sought from the court the grant of a limited stay of execution of the judgment pending the filing, hearing and determination of an intended application for stay of execution to the Court of Appeal. While this is the position, the applicant in the supporting affidavit departed from the said position and deposes to the fact that it is praying for a stay of execution pending the hearing and determination of an intended appeal.



4. It was further contended by the respondent that it was settled that the jurisdiction of the superior court on stay of execution pending intended appeal was governed by order 42 rule 6 of the Civil Procedure Rules, 2010 which required that the applicant satisfies the legal strictures of:
  - i. Substantial loss
  - ii. Sufficient cause to warrant grant of stay and;
  - iii. The provision of security for the due performance as will ultimately be binding.
5. According to the respondent, the applicant had failed to satisfy the condition on substantial loss as is settled on money decrees. The applicant ought to have raised reasonable apprehension that the claimant had no means to refund the decretal sum if paid to him in the event the decree is reversed on appeal. The respondent contended that he was a person of means. That is to say, he was in possession of two properties valued at Kshs. 50 million and had been on a salaried employment with KCB Bank for over 20 years hence could not be termed as impecunious.
6. This court on February 17, 2022 exercised its discretion and granted the applicant temporary stay of execution pending the hearing and determination of the present application. The court in granting the motion ex parte pending inter partes hearing must have had in mind the principles governing the grant of stay execution set out under order 42 rule 6 of the Civil Procedure Rules, 2010
7. The court has perused the submissions by both counsel on the principles governing grant of stay of execution under order 42 rule 6 and both seem to be in agreement. The several authorities cited by both Counsel especially counsel for the applicant appear to overemphasize and say in many words what is already clear under order 42 rule 6. The court is however grateful for the industry of Counsel.
8. The respondent however did not seem to agree that applicant had adequately demonstrated that he was a man of straw who would not be able to restore the decretal sum if paid during the pendency of the appeal and it later becomes successful. The respondent on the contrary averred that he is in possession of two prime properties worth Kshs. 50 million and further that he had previously worked for over 20 years at KCB Bank hence could not be classified as a man of straw.
9. The court is alive to the fact that the decretal sum herein is substantial. The court further does not doubt the capacity of the respondent to restore the decretal sum if paid pending appeal. The court however takes judicial notice that the respondent is a State Corporation substantially funded by the National Government which relies on tax revenue hence a quasi-Government agency. Order 42 rule 8 exempts the Government from providing security for the performance of a decree as precondition for granting a stay of execution. To this extent and as observed above concerning the linkage between the applicant and the Government, the court will not make it a precondition that the respondent provides security as a precondition for granting stay of execution.
10. The foregoing having been said, the court hereby grants stay of execution of its Judgment dated February 4, 2022 and all consequential orders pending the hearing and determination of the intended appeal to the Court of Appeal.
11. It is so ordered

**DATED THIS 17TH DAY OF AUGUST, 2022**

**SIGNED BY: HON. JUSTICE J. N. ABUODHA**

**THE JUDICIARY OF KENYA.**

**EMPLOYMENT AND LABOUR RELATIONS COURT DATE: 2022-08-18 09:47:48+03**

