



**Wanjohi v National Bank of Kenya Limited (Cause 1109 of 2014)  
[2022] KEELRC 12796 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12796 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1109 OF 2014  
MN NDUMA, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**JOSIAH WANJOHI ..... CLAIMANT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The applicant by a notice of motion application seeks stay of execution of the judgment and decree dated 18<sup>th</sup> May, 2021 pending the hearing and determination of intended appeal to the Court of Appeal against the Judgment.
2. The application is premised on grounds set out on the face of the Notice of Motion and in the supporting affidavit of Mr. Stephine Opiyo Obong'o sworn on 11<sup>th</sup> June, 2021.
3. The application is premised on Order 42 Rule 6 of the *Civil Procedure Rules* to preserve the subject matter while also protecting the interest of the claimant by providing security for the judgment. That the application has not been visited with inordinate delay. That the judgment sum of Kshs17,742,461, is substantial and the applicant is likely to suffer substantial loss in the event the sum is paid and the applicant is successful in its appeal.
4. That the appeal is arguable and the notice of appeal was filed within time, on 3<sup>rd</sup> May, 2021 and the applicant promptly applied for Court proceedings on 19/5/2021. That the application be granted.
5. The application is opposed vide a replying affidavit sworn to by the claimant. The claimant states that the applicant has not satisfied the prerequisite of grant of Stay of Execution in that judgment was delivered on 18<sup>th</sup> May, 2021 and the applicant applied for Court proceedings on 19<sup>th</sup> May, 2021. The applicant then filed a notice of Appeal on 31<sup>st</sup> May, 2021 intending to appeal the judgment but the same was only served upon the claimant's advocates on 7<sup>th</sup> June, 2021. That the application was served



- on the claimant's advocates on 24<sup>th</sup> September, 2021 after a period of over three (3) months after the application was filed in Court.
6. That this delay is not explained by the applicant whose only interest was to obtain *ex parte* interim orders and then sleep on their rights to prosecute the matter contrary to Order 42, Rule 6 which provides that "No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order ....."
  7. That no order for stay of execution shall be made unless:-
    - a. The Court is satisfied that the substantial loss may result to the Applicants unless the Order is made, and that the application has been made without unreasonable delay; and
    - b. 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 Applicants."
  8. The applicant relies on the case of *Samvir Trustee Limited v Guardian Bank Limited* (2007) eKLR where the Court held: -
 

"Every party aggrieved with a decision of the High Court has a national and undoubted right to seek the intervention of the Court of Appeal and the Court should not put unnecessary hindrance to the enjoyment and exercise of that right by the defendant.

.....A stay would be granted unless there is overwhelming hindrance to the exercise of the discretionary powers of the Court."
  9. The claimant on the other hand relies on the case of *Winfred Nyawira Maina -vs- Peterson Onyiego Gichana* [2015] where the Court held: -
 

".... moreover, he must bring his application without unreasonable delay and give security sufficient to cover performance of the decree which may ultimately be payable by him."
  10. In the present matter, the application was filed without unreasonable delay but there is unexplained delay of over three months in serving the application on the claimant's advocates.
  11. This suit was filed at the High Court in the year 2000 by the claimant who was then 50 years of age. The judgment of the Court was delivered on 18<sup>th</sup> May, 2021. It has taken more than twenty years for the suit to be determined and the claimant is entitled to enjoy the fruits of the judgment without further delay.
  12. That notwithstanding, the right of the claimant to enjoy the fruits of the judgment must be balanced with the right of the respondent to appeal against the decision of the Court.
  10. The Court is inclined in the circumstances of the case to grant an order that balances the rights of both parties and therefore directs as follows:
  11. The applicant is granted stay of execution of the judgment of the Court delivered on 18<sup>th</sup> May, 2021 on condition that the applicant pays a sum of Kenya Shillings five (5) million to the claimant within the next 14 days and deposit the balance of the decretal sum in an interest earning account held by the advocates for the claimant and the advocates for the applicant within 30 days of this ruling.
  11. In the event the applicant does not satisfy any of the two conditions above, the order for stay of execution shall abate and the claimant shall proceed to execute the judgment and the decree of the Court without any further recourse to the Court.



**DATED AND DELIVERED AT NAIROBI (ONLINE) THIS 29TH DAY OF SEPTEMBER, 2022.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

**Mr. Mutua for Respondent/Applicant**

**Mr. Machira for claimant**

**Ekale – Court Assistant**

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