



REPUBLIC OF KENYA



KENYA LAW
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**Munuve v Roadtainers [MSA] Limited (Cause 389 of 2018)
[2022] KEELRC 12793 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12793 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 389 OF 2018
AK NZEI, J
SEPTEMBER 22, 2022**

BETWEEN

MUMO KIMANZI MUNUVE CLAIMANT

AND

ROADTAINERS [MSA] LIMITED RESPONDENT

RULING

1. Judgment in the suit herein is shown to have been delivered on 7th October 2021, whereby the Claimant/Respondent was awarded ksh. 341,136, costs of the suit and interest. It was also ordered that the Claimant be issued with a Certificate of Service.
2. The Court's record shows that on 2nd November 2021, the Respondent/Applicant filed a Notice of Appeal dated 1st November 2021, indicating that it intended to appeal against the aforesaid judgment of this Court.
3. On 9th February 2022, the Respondent filed a Notice of Motion dated the same date (9th February 2022) seeking the following orders:-
 - a. that the Court be pleased to issue stay of execution of the judgment delivered on 7th October 2021 and any other consequential orders pending determination of the application.
 - b. that the Court be pleased to issue stay of execution of the Court's judgment dated 7th October 2021 and any other consequential orders pending hearing and determination of an appeal.
 - c. that costs of the application be provided for.
4. The application is based on the supporting affidavit of one Yusuf Ibrahim Pasta sworn on 9th February, whereby it is deponed, inter-alia, that the Respondent/Applicant has filed a Notice of Appeal and believes that the intended appeal has high chances of success, that the Applicant has filed an application



for enlargement of time to file an appeal in the Court of Appeal, and that the Applicant is apprehensive that execution may issue, thus rendering the appeal nugatory.

5. The application is opposed by the Claimant, who on 23rd February 2022 filed a Replying Affidavit sworn by himself on 23rd February 2022. It is deponed in the said Replying Affidavit, inter-alia:-
 - a. that the Respondent/Applicant's Notice of Appeal was filed out of time, and is the subject in the Court of Appeal Civil Application No. E093 of 2021(Roadtainers (Msa) Limited -vs- Mumo Kiminza Munuve) which is yet to be determined.
 - b. that the Applicant has no appeal or intended appeal as the Court of Appeal has not granted him leave to file the appeal out of time.
 - c. that the Court of Appeal is yet to hear and to determine the application by the Applicant, and hence the substance of the application (herein) should be canvassed before the Court of Appeal.
 - d. that there is nothing to be rendered nugatory as there is no appeal on record.
 - e. that the application is brought in bad faith and is merely intended to deny the Claimant enjoyment of fruits of this Court's judgment.
 - f. that delay in filing the application is inordinate, and has not been explained.
6. On 24th February 2022, I ordered both parties to file written submissions on the application and ordered an interim stay of execution of this Court's decree. Written submissions were subsequently filed, and I have considered the same.
7. It is worth noting that it is wrong for a party to seek stay of execution of a judgment, as what is executed, and is capable of being executed is a decree, not the judgment.
8. This Court's Rules, the Employment and Labour Relations Court (Procedure) Rules 2016, are silent on the issue of stay of execution pending appeal. The practice of this Court has been to resort to the Civil Procedure Act and the Rules made thereunder in situations where its aforesaid Rules are silent on any particular issue.
9. Order 42 Rule 6(1) & 4 of the [Civil Procedure Rules](#) provides 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 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)
 - (3)



(4) for the purposes of this rule, an appeal to the Court of Appeal shall be deemed to have been filed when under the rules of that Court notice of appeal has been given.”

10. The question that follows is whether, in the present case, a Notice of Appeal was given under the Court of Appeal Rules. As I preceded to point out in this Ruling, this Court’s judgment was delivered on 7th October 2021, and a Notice of Appeal was not filed until 2nd November 2021. This was clearly outside the fourteen days period provided by the Court of Appeal Rules. An appeal cannot be deemed to have been filed under such circumstances. The Respondent/Applicant has not demonstrated that there is an appeal on record on the basis of which a stay of execution pending appeal can be ordered by this Court.
11. Consequently, I find no merit in the Notice of Motion dated 9th February 2022. The same is hereby dismissed with costs and the interim stay of execution of this Court’s decree ordered on 24th February 2022 is hereby vacated.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY OF SEPTEMBER 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Anaya for Claimant/Respondent

Mr. Iddi for Respondent/Applicant

