



**Steel Structures Limited v Muteti (Appeal 18 of 2022)
[2022] KEELRC 3976 (KLR) (20 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3976 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 18 OF 2022
K OCHARO, J
SEPTEMBER 20, 2022
(FORMERLY HCCA NO E843 OF 2021)**

BETWEEN

STEEL STRUCTURES LIMITED APPLICANT

AND

ALFRED MUTUA MUTETI RESPONDENT

RULING

1. Through a notice of motion application dated May 31, 2022, expressed to be under the provisions of order 42 rule 6, order 51 rule 1 of the Civil Procedure Rules 2010, sections 3A, 63 (e) and 75(1) (h) of the Civil Procedure Act and article and 159 of the Constitution, the appellant /applicant sought for the following orders:
 - a. That this application be certified urgent and the same be placed before the duty judge and be heard *ex-parte* in the first instance.
 - b. That this honourable court do hereby order stay of execution of the judgment and decree in CMEL No 1118 of 2019 Alfred Mutua Muteti v Steel Structures Limited pending the hearing and determination of this application.
 - c. That this honourable court do order stay of execution of judgment and decree in CMEL No 1118 of 2019 Alfred Mutua Muteti v Steel Stures Limited pending the hearing and determination of the appeal.
 - d. That the honourable court be pleased to give any other or further relief that it may deem necessary, fit and just and convenient to grant in the circumstance for the ends of justice.
 - e. That the costs of this application be provided for.



2. The application is grounded on the grounds obtaining, on the face thereof, and in the supporting affidavit sworn by counsel for the appellant/ applicant, Faraday Nyangoro, on the May 31, 2022.
3. The application is opposed upon premise of those grounds contained in the replying affidavit sworn on the June 20, 2022 by the respondent, Alfred Mutua Muteti.
4. When the application came up for hearing on the June 22, 2022, this court directed that the application be canvassed by way of written submissions within certain specific timelines. Neither the appellant/ applicant nor the respondent has complied with the directions. This ruling is therefore without the benefit of submissions by the parties.
5. The applicant stated that the judgement that it has sought to unseat through the appeal herein was delivered on December 3, 2021. The appeal assails the entire judgement.
6. It was contended that the respondent has taken out warrants of attachment and proclaimed the applicant's property in execution of the decree that flowed from the judgment, the subject matter of the appeal herein. If the execution process is allowed to proceed to conclusion, the appeal shall be rendered nugatory. There is no evidence on record to demonstrate that the respondent will be in a position to refund the decretal amount in the likely event that the appeal succeeds.
7. It is in the interest of justice that there be stay of execution of the judgment and decree in CMEL No 1118 of 2019 Alfred Mutua Muteti v Steel Stures Limited pending the hearing and determination of the appeal.
8. The applicant asserts that its appeal is meritorious. That if the order of stay of execution as sought is not granted the appellant/ applicant will be condemned unheard which is contrary to the rules of natural justice.
9. The appellant/ applicant states that it is ready, willing and able to furnish such reasonable security within such time as this court may direct.
10. In opposition to the application the respondent states that the application was filed with inordinate delay as the judgement of the subordinate court was delivered on the December 3, 2021, and the application filed on June 3, 2022. The applicant has not given any reason for the delay in filling of the application.
11. The respondent further states that the filling of the application was an afterthought only stirred by the auctioneer's action in execution of the decree.
12. The principles of natural justice are not one sided, they should be applied to aid justice and fairness to both parties, and not one party in the litigation combat.

Determination.

13. Order 42 rule 6 of the [*Civil Procedure Rules, 2010*](#) donates power to the court exercising an appellate jurisdiction to order for a stay of execution of a decree or order of the trial court pending the hearing and determination of an appeal lodged against the decree or order before it. The power so donated is however not power at large. It is only exercisable in favour of the party seeking the stay upon being satisfied that the party has established those specific conditions stipulated under sub-rule 6[2], which provides;

2. No stay of execution shall be made under sub rule [1] unless –



- [a]. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay.
- [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 applicant.
14. It is not in contest that the judgement the subject matter of the appeal herein was delivered on the December 3, 2021. The application before this court was filed on the June 7, 2021, therefore after a period of seven [7] months from the date of the judgment. The law required the applicant to bring the application within a reasonable time. As to what constitutes reasonable time is dependent on the peculiar circumstances of each case. Therefore, it becomes incumbent upon the party seeking for the order of stay of execution of the decree or order, in situations where the application was not filed immediately after delivery of the judgement or ruling from which the decree or order emanated, respectively, to account for the time between the date of the judgment or the ruling and the filing of the application.
15. The applicant in this matter did not at all give an explanation as to why the application was not filed immediately but after seven months. The timing of the application leaves no other impression other than the same was prompted by the commencement of the process of execution of the decree. The court hesitates not to find that there was inordinate delay in filing of the application by the applicant.
16. The court has not lost view of the fact that the appeal herein was filed on the December 23, 2021. Again, the applicant didn't explain to the court why it took more than six [6] months after this date to file the application.
17. The applicant argued that to decline to grant the order of stay shall be tantamount to condemning the applicant unheard contrary to the tenets of natural justice. I have found considerable difficulty in understanding this argument in the context of an application for stay of execution of the decree. The argument is definitely not in sync with the provisions of order 42 of the Civil Procedure Rules which do not make a grant of an order for stay of execution automatic upon filing of an appeal.
18. The applicant further contended that its appeal herein raises strong grounds, and that in the event it succeeds it shall be rendered nugatory if the execution process is allowed to proceed to conclusion. The applicant has not placed before this court a copy of the judgment to enable it gauge whether the appeal is vexatious, frivolous or without a chance of success *prima facie*. Having stated this, it is imperative to state that this court is cognizant of the fact that as to whether or not the filed appeal is one with chances of success, is not one of those factors that a court faced with an application under the provisions of order 42 rule 6, has to consider.
19. The applicant did not demonstrate to this court that it will suffer any substantial loss, if the instant application was not granted.
20. In the upshot, this court finds no merit in the application dated May 31, 2022, and it is hereby dismissed with costs.
21. Orders accordingly.

READ, SIGNED AND DELIVERED THIS 20TH DAY OF SEPTEMBER, 2022.

OCHARO KEBIRA

JUDGE



In presence of

Mr. Nyangoro for the Appellant / applicant

No appearance for the Respondent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

OCHARO KEBIRA

JUDGE

