



**Timsales Limited v Mauti (Appeal E009 of 2022)
[2022] KEELRC 12729 (KLR) (20 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12729 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E009 OF 2022
HS WASILWA, J
SEPTEMBER 20, 2022**

BETWEEN

TIMSALES LIMITED CLAIMANT

AND

JAPHETH MOCHAMA MAUTI RESPONDENT

RULING

1. This ruling is in respect of the appellant/applicant's application dated June 10, 2022 filed under certificate of urgency, pursuant to Order 42 rule 6(1) & (2) of the [Civil Procedure Rules](#) and section 1A, 1B and 3A of the [Civil Procedure Act](#), seeking the following orders;
 - 1) Spent.
 2. That this honourable court be pleased to stay execution of the judgment and decree in *Molo CMCC No 46 of 2018* delivered on the May 24, 2022, pending hearing and determination of this application interpartes.
 3. That there be stay of execution of the judgment and decree in *Molo CMCC No 46 of 2018* pending the hearing and determination of the applicant's appeal.
 4. That costs of this application be provided for.
2. The application is supported by the grounds on the face of the application and the affidavit sworn by the applicants insurers legal officer, Roselyne Kihara on June 10, 2022 and based on the following grounds:-
 - a) That the applicant was insured by ICEA Lion General Insurance Company and therefore they are obligated to settle the decretal sum.



- b) She avers that judgment in this matter was delivered on the May 24, 2022 in favour of the claimant as against the applicant who has filed this appeal to address its dissatisfaction with the judgment of the trial court in Molo.
 - c) She avers that the applicant is apprehensive that execution will commence anytime unless stay of execution is ordered by the court.
 - d) According to the applicant the appeal is based on the fact that the trial court in Molo did not have jurisdiction to hear and determine the trial suit, it having been a *Work Injury and Benefits Act* (WIBA) matter.
 - e) She avers that the issue of jurisdiction was raised in the lower court however the court dismissed it forcing the respondent to file this appeal.
 - f) It is contended that if stay of execution is not granted by this court, their appeal herein will be rendered nugatory and it would occasion them substantial and irreparable loss to the applicant and its insurers.
 - g) It is their averments that the claimant if paid the decretal sum would not be in a position to refund them if the appeal succeeds.
 - h) The applicant also avers that its willing to furnish this court with security for costs pending appeal as may be directed by this court.
3. In opposing the application, the respondent, Japheth Mochama Mauti, swore a replying affidavit dated June 16, 2022 on the following grounds;
- a) That the application is bad in law, unmerited and does not meet the requisite threshold for it to be allowed.
 - b) He avers that the appeal upon which the application is anchored is incompetent, bad in law, a short in the dark, waste of judicial time, otiose and an abuse of court process.
 - c) On the issue of jurisdiction raised, the affiant avers that the matter was indeed raised before the trial court when the said court heard the preliminary objection and delivered its ruling opining that it has jurisdiction leading to the determination of the main suit, which both parties participated in. He added that the applicant herein did not appeal on the ruling of the court at the trial court.
 - d) It is their contention that if the applicant was aggrieved by the decision of the trial court on jurisdiction they ought to have either appealed on the said decision or review it but not wait for the main suit to be determined before appealing on it.
 - e) The affiant avers that the trial court has jurisdiction to hear and determine the WIBA case based on legitimate expectation, it having been filed between May 22, 2008 and December 3, 2019 as was decided in the case of *West Kenya Sugar Company V Tito Lucheli Tangale Kisumu* (2021) eKLR and the case of *Dickson Otieno Ndaga v China Jiangsu International* [2021] eKLR.
 - f) On the issue of liability and damages awarded by the lower court, the affiant avers that the applicant did not tender any evidence to controvert its case before the trial court informing them being held 100% liable.
 - g) On that basis the deponent avers that the appeal does not have merit to warrant the granting of the orders sought herein.



- h) The respondent states that the applicant has not demonstrated any loss it will suffer if the stay orders are denied. More so when the decree at hand is a money decree.
 - i) It is the respondent's case that the application by the appellant is meant to merely delay this case and deny/delay the enjoyment of the fruits of its judgment.
 - j) He, without prejudice,² aver that if the court is inclined to allow the application, then the court to order the applicant to pay him half of the decretal sum within 30 days and the other half be deposited in a joint interest earning account in the name of both advocates for the parties within 30 days.
- 4. The parties did not file any submissions and instead chose to rely on their affidavits.
 - 5. I have examined the averments of the parties herein. The applicant has demonstrated that they have filed an appeal which appeal may be rendered useless if the stay orders are not granted.
 - 6. The applicants are also willing to provide security for judgment if allowed by this court.
 - 7. To avoid a miscarriage of justice, I would allow the stay orders sought on condition that the entire decretal sum be deposited in an interest earning account held in joint names of counsels on record within 60 days in default execution may proceed.
 - 8. Costs to abide appeal.

Ruling delivered virtually this 20TH day of SEPTEMBER, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Muchemi holding brief for Njuguna for Respondent – present

Applicants – absent

Court Assistant – Fred

