



**IL Ngwesi Company Limited t/a IL Ngwesi Eco Lodge & another v Kinyaga
(Appeal E004 of 2022) [2022] KEELRC 13112 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13112 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
APPEAL E004 OF 2022
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

**IL NGWESI COMPANY LIMITED T/A IL NGWESI ECO
LODGE 1ST APPELLANT**

**KIP OLE POLOS (SUED AS THE CHAIRMAN) IL NGWESI COMMUNITY
LAND AND ILGWESI COMPANY LIMITED 2ND APPELLANT**

AND

JAMES SARIKU KINYAGA RESPONDENT

RULING

1. This is an application by way of notice of motion dated April 11, 2022 and seeks the following orders of court.
 - a) That this motion be certified as urgent and the same be heard *ex-parte* in the first instance.
 - b) That the applicant be granted leave to appeal out of time against the ruling and order of court delivered on February 9, 2022 by Hon Kithinji AR at Nanyuki Magistrate's Court.
 - c) That pending hearing and determination of this application the honourable court be pleased to stay the ruling by Hon Kithinji AR Chief Magistrate Nanyuki law courts dated February 9, 2022.
 - d) That the delay was occasioned by the fact that parties have been in negotiations to find an amicable solution to the employment stalemate with a view to having an out of court settlement.
 - e) That the costs of this application be provided for.
2. It is grounded as follows;



1. That the applicant is dissatisfied with the ruling of the ELRC Cause No E031 of 2021 at Nanyuki Law Courts intends to file an appeal.
 2. That, the appeal raises serious arguable points and has a high likely of success.
 3. That a request has been lodged for the certified copies of the proceedings and ruling to facilitate the filing of the appeal.
 4. That the respondents are on process of seeking, lodging and or filing contempt of proceedings against the appellant on grounds of court disobedience.
 5. That unless orders sought herein are issued as a matter of urgency, the applicant will suffer irreparable loss and the appeal will be rendered nugatory.
3. The respondent in a replying affidavit sworn on May 11, 2022.....
11. I am advised by my advocates on record M/s Tobiko, Njoroge & Co Advocates which advice I believe to be correct that the applicants are guilty of laches and the delay in filing the application is inordinate and inexcusable.
 12. The application is an abuse and misuse of the judicial process and clearly an afterthought meant to stall the lower court case. The delay occasioned by the applicants has not been satisfactorily explained.
 13. I am advised by my advocates on record M/s Tobiko, Njoroge & Co Advocates which advice I believe to be correct that the Applicants have not raised serious questions which would have a good chance on appeal and it is important to preserve precious judicial time.
 14. I am advised by my advocates on record M/s Tobiko, Njoroge & Co Advocates which advice I believe to be correct that the Applicants have not satisfied this honourable court that they will suffer substantial loss if the orders sought in their application are not granted. Furthermore, they have not furnished or offered any security for the due performance of the orders issued by Hon AR Kithinji (PM) on February 9, 2022.
 15. The application dated April 11, 2022 is schadalous, frivolous, vexatious and is devoid of merit which ought to be dismissed with costs.
4. The applicants premise their case on the ground that there has been serious negotiations *inter partes* but these have been frustrated by the respondent. Again, the anticipated appeal has high chances of success as the respondents are bent on creating a rift between the parties and further escalate hostility and a toxic relationship by forcing unsuitable employment relationship.
 5. The applicants further buttress their case by relying on the authority of [Vishva Stone Suppliers Company Limited v RSR Stone \[2006\] Limited](#) where the issue of delay was adequately analysed and the courts observed that they should only be used in extreme cases to circumvent or stop an application for stay of execution or enlargement of time.
 6. The respondent opposes the application and seeks to rely on the authority of section 75G of the [Civil Procedure Act](#) which provides as follows;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.



Provided that an appeal may be admitted out of time if the appellant satisfied the court that he had good and sufficient cause for not filing the appeal in time.”

7. She also submits compliance with order 42 rule 6 (1) and (2) of the *Civil Procedure Rules* which stipulates the ingredients and threshold required for a grant of stay of execution.
8. On the premises of the respective cases of the parties, the application tilts in favour of the respondent. This is because the applicant has not met the threshold for issue of the orders sought. The respondent’s case and submissions overwhelms that of the applicant who has failed to satiate the requirements of order 42 rule 6 of the *Civil Procedure Rules* on stay of execution.
9. I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr. Larpei instructed by Larpei & Co.Advocates for the Applicant

2. Mr.Makori instructed by Tobiko Njoroge & Co.Advocates for the Respondent.

