



**Kenya Union of Commercial, Food and Allied Workers v Magunas Super Stores Limited (Cause 10 of 2020) [2022] KEELRC 13162 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13162 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE 10 OF 2020  
DKN MARETE, J  
OCTOBER 31, 2022**

**BETWEEN**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**MAGUNAS SUPER STORES LIMITED ..... RESPONDENT**

**RULING**

1. Here are two applications dated March 28, 2022 by the respondent and another dated May 10, 2022 by the claimant.
2. They respectively come out thus;
  1. That this honourable court be pleased to certify the application herein as urgent and be pleased to her prayer 2 and 3 *ex parte* due to its urgency.
  2. That this honourable court be pleased to stay of execution of the judgment and decree herein made on March 9, 2022 pending hearing and determination of this application *inter partes*.
  3. That this honourable court be pleased to stay of execution of the judgment and decree herein made on March 9, 2022 pending the hearing and determination of this respondent/applicant's appeal.
  4. That this honourable court do issue such further orders or directions that it may deem fit to grant in the interest of justice.
  5. That the costs of this application be in the cause.
3. It is grounded as follows;



- a. That there is already judgment in favour of the claimant against the respondent and the claimant/respondent is in the process of executing the judgment herein and decree herein.
  - b. That the claimant/respondent intends to execute the judgment herein and decree herein on March 30, 2022 as per the letter dated March 16, 2022 by the claimant's advocates and this would have the effect of rendering the appeal nugatory.
  - c. That the respondent/applicant has lodged an appeal against the judgment herein made on March 9, 2022.
  - d. That the respondent/applicant therefore makes this application seeking stay of execution of the judgment and the decree herein made on March 9, 2022 pending the hearing of this application inter partes and subsequently pending the hearing of its appeal.
  - e. That the respondent/applicant stands to suffer injustice, prejudice, loss and damage should the claimant/respondent proceeds to execute the judgment herein and decree herein made on March 9, 2022.
  - f. That the respondent/applicant has an arguable appeal with a high probability of success.
  - g. That the applicant therefore makes this application seeking stay of execution of the judgment and decree herein delivered on March 9, 2022 pending the hearing of the appeal.
  - h. That if an order of stay of execution is not granted, the claimant/respondent will proceed with process of executing the judgment herein and decree and thus rendering this application and the whole appeal nugatory.
  - i. That in the interim, the claimant is exposed to risk of execution of the judgment since there is no stay and pray that execution of the said judgment be stayed.
  - j. That the respondent/applicant is appealing against the judgment that was delivered in this matter and thus pray that this application be certified as urgent and heard on priority.
  - k. That the respondent/applicant is willing to provide security for costs of the appeal and/or deposit the decretal sum in court as may be ordered by the honourable court.
  - l. That the respondent/applicant herein stands to suffer no prejudice if the orders of stay of execution herein sought are granted.
  - m. That this application will not occasion any prejudice to the claimant/respondent herein.
  - n. That there has been no inordinate and unreasonable delay in presenting this application.
  - o. That according to principles of natural justice, it is fair, just and mete that the prayers sought herein be granted as prayed.
4. The one dated May 10, 2022 comes out thus;
1. That this application be certified urgent service thereof be dispensed and same be heard *ex parte* in the first instance.
  2. That this honourable court do and hereby reviews its judgment delivered on 9th March, 2022, to include all other reliefs sought in the claim since the termination was declared unlawful.



3. That the honourable court finds the grievant was entitled to notice, overtime, accrued leave overtime, unpaid wages on top of compensation which the court award following its declaration of unlawful termination.
  4. That the honourable court do issue any other order it deems fit to address the end of justice.
  5. That each party to bear their own cost of this application.
5. It is grounded as follows;
1. That on March 9, 2022, the honourable court delivered a judgment in regards with the claim placed before it which was “unlawful/unfair termination of Margaret Nyambura Mwangi.
  2. That in the judgment the honourable court declared that the termination was unfairly undertaken since there was no hearing as required under section 41 of the [Employment Act 2007](#).
  3. That the honourable court award the grievant only 12 months’ compensation and left out other reliefs like notice, unpaid salaries, overtime, house allowance and accrued annual leave days.
  4. That the honourable court erred in its order since even after declaring the termination unlawful it did not order for payment of notice, unpaid salaries, overtime, accrued annual leaves and house allowance.
  5. That all the reliefs sought in the claim were to be awarded to the grievant upon declaration of unlawful termination in the judgment by the hon court.
  6. That the honourable courts do and herby finds that its final orders in terms of award is not in line with its findings in the last two paragraphs in page six of the judgment which the court is invited to correct.
  7. That under the circumstance it is only fair and reasonable that the Honourable court reviews the judgment so that the award can be in line with the court findings of page six of the judgment.
6. The claimant/respondent answers the 1st application *vide* a replying affidavit sworn on June 13, 2022. Here she opposes the application on grounds that at the time of judgment on March 9, 2022, the applicant did not seek any stay of execution. They were served with a notice on March 16, 2022 but ignored this until 28th March instant two days before the expiry of the notice and filed this application.
  7. It is her further case and submission that this is a mere delay of justice to the grievants. It does not meet the legal threshold for award of stay of execution pending appeal as no evidence of substantial loss has been demonstrated by the applicant. Again, this comes three months down the line and with no notice of appeal leads credence to the delay overture by the applicant.
  8. The claimant/respondent further seeks to rely on order 42 rule 6 (1) of the [Civil Procedure Rules](#) which provides that a winner in litigation should not be denied the opportunity to execute the decree in pursuit of enjoyment of the fruits of judgment in the event the appeal fails. It is her penultimate case that the application lacks merit, misplaced, bad in law and should be dismissed with costs.
  9. The application for review dated May 10, 2022 is not answered by the respondent.



10. At the close of the day the claimant/respondent in her written submission dated August 2, 2022 answers and submits to the application dated March 28, 2022. This is a reiteration of her reply to the same.
11. She also submits to the application dated May 10, 2022 *vide* her written submissions dated August 24, 2022. This again is in reiteration of her reply to the same.
12. The respondent in their written submission dated August 12, 2022 come out in opposition to the decree holders application for review dated May 10, 2022 and in support of her application for stay of execution.
13. A glimpse of the various cases by the parties brings out the following outcome of their respective cases.
  - i. The application for review dated May 10, 2022 be and is hereby allowed.
  - ii. That an award one (1) months salary in lieu of notice is made.
  - iii. That this award is for Kshs 18,515.15.
  - iv. That the application for stay of execution dated March 28, 2022 be and is hereby dismissed.
  - v. That each party shall bear their costs of the applications.

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

**D.K.NJAGI MARETE**

**JUDGE**

**Appearances**

**1. Miss Macharia for the Claimant Union.**

**2. Mrs.Asiimwe instructed by Magee Law LLP Advocates for the Respondents/ Applicant.**

