



**Ado & another v Mander Water & Sewerage Company Limited & 2 others  
(Petition E150 of 2021) [2022] KEELRC 14649 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14649 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E150 OF 2021  
M MBARŪ, J  
OCTOBER 27, 2022**

**BETWEEN**

**SULEIMAN MOHAMED ADO ..... 1<sup>ST</sup> PETITIONER**

**SULEIMAN MOHAMED ISSAK ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MANDERA WATER & SEWERAGE COMPANY LIMITED ... 1<sup>ST</sup> RESPONDENT**

**ABDIKADIR TACHE MOHAMEEND, THE CHIEF EXECUTIVE OFFICER**

**MANDERA WATER & SEWERAGE COMPANY LIMITED .. 2<sup>ND</sup> RESPONDENT**

**REGISTRAR OF COMPANIES ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> respondents herein filed application dated 11<sup>th</sup> February, 2022 seeking for orders of stay of execution of the judgement and decree delivered herein on 25<sup>th</sup> January, 2022 on the grounds that the court allowed the petition and held that the petitioners are the legally appointed board of directors of the 1<sup>st</sup> respondent whereas the County Government had acted on the basis that the Water Services Regulatory Board Guidelines and policies are that the chief officers finance and chief officer water are part of the board as the alternate members of the County Executive Committee members. The execution of the judgement will be contrary to the Water Services Regulatory Board Guidelines.
2. The application is supported by the affidavit of Abdikadir Tache Mohamed the 2<sup>nd</sup> respondent who avers that the judgement of the court if executed will muddle business affairs of the 1<sup>st</sup> respondent which requires the Chief Officer Water and the Chief Officer Finance to constitute the Board of Directors appointed under the guidelines of the Water Services Regulatory Board guidelines. There are existing officers in this regard and which will be disrupted if the judgement is executed.



3. The respondents have an arguable appeal against the judgement of the court and should be allowed to proceed on the merits. If the orders sought are not granted, the doctrine of frustration will be visited upon in the nexus between the respondents and the petitioner as an industrial relationship is one that stems from operating regulations within the organisation and the willingness of parties involved to form a mutual trust and good will and the same should not be forcefully imposed on one party to the detriment of another.
4. In reply, the 1<sup>st</sup> petitioner filed his Replying Affidavit and avers that he was appointed and gazetted as Board of Director of the 1<sup>st</sup> respondent and following his petitioner together with the 2<sup>nd</sup> petitioner, court delivered judgement on 25<sup>th</sup> January, 2022 and there is no appeal against the same as alleged by the respondents. The respondents seek to rely on the Water Services Regulatory Guidelines which the court held are inferior to *the Constitution*, the *Companies act* and the *Employment Act*, 2007 and such does not justify the grant of the orders of stay of execution and the application should be dismissed with costs.
5. The respondents filed Further Affidavit of the 2<sup>nd</sup> respondent who avers that they filed Nairobi Civil Appeal No.E092 of 2022 – Manderu Water and Sewerage Company Limited & 2 others v Suleiman Mohamed Ado & another and which appeal should be heard on the merits. The officers currently serving the 1<sup>st</sup> respondent are lawfully appointed and the execution of the judgement herein will render the appeal nugatory.
6. The respondents submitted that *the Constitution* grants every person a right to a hearing under Article 50 and Order 42 of the *Civil Procedure Rules* allow for stay of execution ending hearing of an appeal which appeal has since been filed against the judgement of this court delivered on 25<sup>th</sup> January, 2022. The 1<sup>st</sup> respondent acted under the provisions of the Water Services Regulatory Board guidelines in appointing the Chief Officer Finance and Water as the current board members upon the resignation of the petitioner and to allow them back into office would muddle up operations. Such factors once considered will show that the respondents have an arguable appeal and stay of execution herein be allowed as held in *James Wagalwa & another v Agnes Naliaka Cheseto* – Bungoma Misc. Appl. No. 42 of 2011.
7. The petitioners submitted that the respondent are challenging the judgement on matters of fact with regard to the application of the Water Services Regulatory Board guidelines which then should have been a review of the judgement and not stay of execution pending appeal. The guidelines sought to be applied do not supersede Article 41, 47 and 48 of *the Constitution* with regard to fair labour relations, fair administrative action and access to justice for the petitioners. The respondents have failed to address any matter and the principles for the grant of stay of execution as outline din the case of *Visbran Ravji Halal v Thornton & turpin* Civil Appeal No.15 of 1990 and the application should be dismissed with costs.

### **Determination**

8. The grant of the order of stay of execution of a judgement and decree therefor should be is premised on the conditions that there exists a sufficient cause, there will be substantial loss is an order of stay is not granted and that the applicant is willing and ready to furnish security for the due performance of the judgement and fundamentally such application should be made without unreasonable delay. See the case of *Stephen Wanjohi versus Central Glass Industries Ltd*, Nairobi HCC No.6726 of 1991 where the court held as follows;

For the court to order a stay of execution there must be:-



- i. Sufficient cause
- ii. Substantial loss
- iii. No unreasonable delay
- iv. Security and the grant of stay is discretionary

these conditions are imperative since the purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal is safeguarded and the appeal if successful is not rendered nugatory.

9. The application by the respondent is that should the orders of stay of execution not be granted, the doctrine of frustration will be visited upon them as the nature of the relations between the parties in employment requires trust and good will and such cannot be imposed on one party to the detriment of the other.
10. Is there a sufficient cause established by the respondents in terms of Order 42 of the Civil Procedure rules to justify the first limb for the grant or an order of stay of execution? Sufficient cause is established where an applicant is able to demonstrate satisfactory grounds to enable the court to exercise discretion for the reason that whenever reasons exists to warrant the court to intervene are just and necessary to achieve the ends of justice as held in *Wachira Karani v Bildad Wachira* [2016] eKLR
11. The 1<sup>st</sup> respondent is a corporate and the 2<sup>nd</sup> respondent as chief officer is an employee just like other employees who serve the corporate. To urge the court that the doctrine of frustration will apply and the judgment cannot be enforced as a result fails to address the condition of the sufficient cause to justify the grant of an order of stay of execution.
12. In the instant application the respondents have not addressed what substantial loss shall be suffered if the order of stay is not granted save to urge the court that the affairs of the 1<sup>st</sup> respondent will be muddled with the return of the petitioners. Such matter is not suffice evidence of what nature of loss envisaged under the principles outlined above and as required under Order 42 of the Civil Procedure Rules.
13. There thus exists no sufficient cause or what substantial loss established by the applicants to justify the orders sought.
14. The above principles addressed, the aspect of the sufficient cause lost, even where the respondents were to offer security deposit which they have not, the substantive principles lacking, the application herein is found without merit and is hereby dismissed with costs to the petitioners.

**DELIVERED IN COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**M. MBARŪ JUDGE**

In the presence of:

Court Assistant: Okodoi

