



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Otieno v West Kenya Sugar Co Ltd & 2 others (Cause 31 of 2020)
[2022] KEELRC 12827 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12827 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 31 OF 2020
S RADIDO, J
OCTOBER 12, 2022**

BETWEEN

RAYMOND JACOB OTIENO CLAIMANT

AND

WEST KENYA SUGAR CO LTD 1ST RESPONDENT

MENENGAI OIL REFINIRIES LTD 2ND RESPONDENT

SUKARI INDUSTRIES LTD 3RD RESPONDENT

RULING

1. In a judgment delivered on 11 April 2022, the Court made the following findings:
 - i. The Claimant had separate contracts with each of the Respondents.
 - ii. The summary dismissal of the Claimant was unfair.
2. The Court then awarded the Claimant:
 - i. Compensation Kshs 2,617,746/-
 - ii. Pay in lieu of notice Kshs 771,812/-Total Kshs 3,389,558/-.
3. The Respondents were dissatisfied and, on 5 May 2022, filed a Motion under a certificate of urgency seeking orders:
 - (1) ...
 - (2) ...



- (3) That the Honourable Court be pleased to stay execution of the decree from the judgment delivered by Hon Justice Radido Stephen on 11th April 2022 in Kisumu ELRC No. 31 of 2020, Raymond Jacob Otieno v West Kenya Sugar Company Limited and 2 others pending the hearing and determination of the Respondents intended appeal.
- (4) That the costs of this application be provided for.
4. The Claimant filed Grounds of Opposition on 11 May 2022. The Respondents filed joint submissions on 3 June 2022, and the Claimant on 7 June 2022.
5. The Court has considered the Motion, affidavit, Grounds of Opposition, and submissions.
6. The threshold a party seeking stay of execution pending appeal should meet follows a well-trodden path. The elements to consider are inordinate delay in moving the Court, demonstration of substantial loss likely to be suffered if a stay is not allowed, and provision of security for the due performance of the decree.
7. The Respondents lodged a Notice of Appeal with the Court on 19 April 2022 and the Motion on 5 May 2022.
8. The issue of inordinate delay does not, therefore, arise in the circumstances herein.
9. The Respondents did not offer security for the due performance of the decree.
10. On the question of substantial loss, the Respondents contended that the Claimant had admitted during the hearing that he was out of employment and, therefore, the chances of recovering the decretal sum if execution proceeded and the appeal were to succeed were remote.
11. The Claimant made no response to the assertion by the Respondents as he did not file a replying affidavit. He, however, submitted that all the Respondents had done was to make a bare deposition that they stood to suffer substantial loss if a stay of execution order was not granted without demonstrating how the substantial loss would be occasioned.
12. Considering the failure of the Claimant to make any response as to his means of income and that the Respondents did not make an offer of security, and the fact that a successful litigant is entitled to enjoy the fruits of his judgment, the Court issues an order staying the execution of the judgment delivered on 11 April 2022, pending appeal on the following terms:
- i. That Kshs 1,694,779/- being half the decretal amount, is paid to the Claimant within 7 days.
 - ii. The balance to be deposited into an interest-earning bank account within 30 days in the names of the advocates on record for the parties with a bank to be agreed hereinafter.
13. Costs of the Motion to abide the intended appeal.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 12TH DAY OF OCTOBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Bruce Odeny & Co. advocates

For Respondents O & M Law LLP Advocates



Court Assistant Chrispo Aura

