



**Ruriga v Hilton Hotel Nairobi (Cause 1024 of 2015)
[2022] KEELRC 13150 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13150 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1024 OF 2015
AN MWAURE, J
NOVEMBER 3, 2022**

BETWEEN

ANTHONY MINA RURIGA APPLICANT

AND

HILTON HOTEL NAIROBI RESPONDENT

RULING

1. The notice of motion application dated March 1, 2022 seeks the following:-
 1. That the application be certified urgent, service thereof be dispensed with and the same proceed *ex parte* in the first instance. Spent.
 2. That the honourable court be pleased to grant an interim order of stay of execution of the judgment of Hon Lady justice Wasilwa delivered on September 17, 2020 pending the hearing and determination of this application inter parties.
 3. The honorable court be pleased to grant an interim order of stay of execution of the judgment of Hon Lady justice Wasilwa delivered on September 17, 2020 and any decrees arising therefrom pending the hearing and determination of the appeal filed by the applicant.
 4. That the honourable court be pleased to grant extension of time to allow the respondent/ applicant to deposit, the decretal sum in a joint interest account in the names of both counsels.
 5. That costs be provided for.
 6. That the honourable court do make such further or other orders as it may deem just and equitable in the circumstances.
 7. That this application is made in utmost good faith and without any undue delay on my part.



2. The court delivered in its judgment in ELRC case No 1024 of 2015 and on September 17, 2020 court awarded claimant a sum of Kshs 747,780/- being terminal benefits.
3. The respondents made it clear their intention to execute the judgment by issuing a proclamation notice through their agent M/s Mbusera Auctioneers proclaiming the applicants movable property on February 22, 2022 which proclamation was to lapse on March 3, 2022 (now past).
4. A substantial loss will be occasioned to the applicant unless the orders sought are granted because the actual decretal sum of Kshs 936,195/- together with costs and interest.
5. The applicant says there has been no delay in filing this application.
6. He further says there is unlikelihood that the respondent will be able to refund the said amount in case the appeal which is arguable succeeds.
7. The applicant further states he is willing to abide with the court's terms as to security including depositing an amount to be determined by the court in a joint interest earning account pending hearing and determination of the appeal.
8. That the respondent/applicant's counsel who had conduct of the case left the organization before he could open a joint interest account. The applicant states that the mistake of the counsel should not be visited on the applicant hereto.
9. The applicant further states he has filed an appeal which has high chance of success. He submits that it is in the interest of justice that the appeal be allowed.
10. Yvonne Obonyo advocate an advocate and legal officer with FKE deponed a supporting affidavit on behalf of respondent/applicant.

respondents replying affidavit

11. The respondent states that the judgment was delivered on September 17, 2020 in favour of the claimant. A notice of appeal was filed on September 20, 2020 by the respondent then. Meanwhile application dated November 23, 2020 was filed and prayed inter alia for stay of execution of judgment pending hearing and determination of the intended appeal.
12. The application was heard on January 27, 2021 and orders for stay pending appeal were granted subject to the applicant depositing the decretal sum within 30 days in a joint interest earning account. The accounts were to be in the names of the respective counsels.
13. The respondent avers that despite following the applicant on several occasions to open a joint interest earning account between the respective law firms up to April 2021 the same did not happen. When the applicant failed to take action the respondent resulted to execution. They proceeded to tax their bill and once again the applicant kept praying for time to put in submissions. Finally the bill was taxed on January 25, 2022 at Kshs 185,945/-. Even after taxation of bill the respondents avers that the applicant's did not take any action.
14. Finally the appellant/applicants were served with proclamation on February 22, 2022 and then they woke up and filed a second application for stay of execution dated March 1, 2022.
15. The respondent says the applicants are using the fact that Kilonzo advocate left the organization as an excuse for failure to open the joint account and deposit he decretal sum. However the forms to open account are still with the employer. Respondent says court had already ruled on this matter and so is now *res judicata*. It is an abuse of the process of court to bring a similar application over one year later.



16. As for extension of time the order was for 30 days which lapsed on February 27, 2021.
17. The respondent also avers that the applicant has failed to prosecute its appeal since November 20, 2020.

Determination

18. The court has noted the notice of appeal was filed by the appellant/applicant on November 20, 2020. The court has also observed an application for stay of execution was filed on November 23, 2020 and stay of execution orders were granted. The same were on condition the decretal sum be deposited in a joint interest earning account between the respective advocates. The same has never been deposited to date.
19. The respondent's reason for not depositing the same apparently was that the advocate who was handling the matter left the organization. The court will not accept that presentation because to open a bank account is not so technical that only one person in an organization can open an account. Furthermore this has taken over two years and that is clearly inordinate delay. The applicants instead of complying with the court orders as per the ruling of January 2021 proceeded to file another similar application in March 2022 after they were served with a proclamation.
20. That is being not only dishonest but also certainly abusing the court process. He who comes to equity must come with clean hands. In other words a person must not have acted in a way inconsistent with the law in a particular matter for which they seek redress. Further now that we are at equity it also says equity does not aid an indolent or a party at fault. Equity does not in other words relieve a person of consequences of his own carelessness.
21. The court has found the applicant has acted:-
 1. In an opaque manner in failing to obey the orders of the court and then approaching the court for similar orders one year later.
 2. Give lame excuses when they did not deposit the decretal sum in an interest earning account.
 3. Applicant has never prosecuted the appeal despite filing notice of appeal in November 2020.

The court is satisfied the applicant has not acted in diligence and does not deserve a second stay of execution close to one and a half years down the line. The application dated March 1, 2022 therefore is not merited and is dismissed with orders to costs in favour of the respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 3RD NOVEMBER, 2022.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by article 159(2) (d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of *the Constitution* and the provisions of section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court,



inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE

