



REPUBLIC OF KENYA



**Twenty Four Secure Security Services Limited v Juma & 5 others (Employment and Labour Relations Appeal 14 of 2022) [2022] KEELRC 13460 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13460 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS APPEAL 14 OF 2022**

**HS WASILWA, J  
DECEMBER 8, 2022**

**BETWEEN**

**TWENTY FOUR SECURE SECURITY SERVICES LIMITED ..... APPELLANT**

**AND**

**WILBERFORCE MARTIN JUMA ..... 1<sup>ST</sup> RESPONDENT  
ESTHER NASERIAH DAPASH ..... 2<sup>ND</sup> RESPONDENT  
PETER NGANYI ORITO ..... 3<sup>RD</sup> RESPONDENT  
PETER MUKHWANA MAPESA ..... 4<sup>TH</sup> RESPONDENT  
MELVIN KHADI MAHAYA ..... 5<sup>TH</sup> RESPONDENT  
LILIAN AKAKIDOR ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. Before me for determination is the appellant's application dated July 18, 2022 filed pursuant to order 42 rule 6 of the [Civil Procedure Rules](#), sections 1A, 2B and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law seeking the following orders; -
  - a. That this application be certified urgent and service thereof be dispensed with in the first instance.
  - b. That there be a temporary stay of execution of the judgement of Hon, Eunice Kelly(SRM) dated and delivered on June 21, 2022 and any other consequential decree issued or to be issued pursuant thereto pending the hearing and determination of this application *inter-pates*.
  - c. That there be stay of execution of the judgement of Hon Eunice Kelly dated June 21, 2022 and any other consequential Decree issued or to be issued pending the hearing and determination of the appeal filed by the respondents against the said judgement.



- d. That the costs of this application be provided for.
2. The application herein is based on the following grounds;
  - a. That the applicant was dissatisfied with the judgement of the trial court, Hon Eunice Kelly delivered on June 21, 2022 and appealed to this court.
  - b. That the appeal is arguable with high chances of success and unless the application for stay is granted the appeal will be rendered nugatory.
  - c. That the applicant is prepared to abide by any order for the furnishing of security on costs as may be ordered by this court. He then suggested to have the decretal sum deposited in an interest earning account in the joint names of the advocates.
  - d. That they are apprehensive that the respondents may not be in a position to refund the decretal sum in the event the appeal herein succeeds.
3. The application herein is supported by the affidavit of Isaac Ondari, the applicant's regional manager, deposed upon on July 8, 2022, which basically reiterated the contents of the claim herein.
4. The application is opposed by the respondents who filed a replying affidavit deposed upon by Benjamin G Wainaina, the advocate ceased of this matter on behalf of the respondents.
5. In the said affidavit the affiant states that the application has not satisfied any of the conditions precedent to granting of stay orders pending appeal. Furthermore, that the applicant has not demonstrated the basis upon which it is seeking stay Orders, especially because there is no loss likely to be occasioned on the applicant if stay orders are not allowed.
6. The deponent denied the allegation by the applicant that the Respondents are men and women of straws who will not be in a position to refund the decretal sum if the appeal succeeds.
7. In the end, the affiant avers that in the event the Court allows the application then they urged the Court to direct the appellants to pay half of the decretal sum to the Respondent and the balance be deposited in an interest earning account in the joint names of the advocates for the parties.
8. The application was heard by way of written submissions with the applicant filing on September 26, 2022 and the respondent filed theirs on September 20, 2022.

#### **Applicant's submissions.**

9. The applicant submitted on only one issue; whether the applicant has satisfied the conditions for grant of the orders of stay of execution pending appeal. On that, it was submitted that order 42 rule 6 of the Civil Procedure Rules gives out the guiding principles that the court would consider when granting or declining stay of execution Orders. He alighted the condition by citing the celebrated case of *Butt V Rent Restriction tribunal* [1979] eklr and the case of *Visbham Ravji Halai V Thornton and Turpin* [1990] klr 365.
10. On substantial loss, the applicant submitted that the purpose of stay is to ensure the applicant is not left with paper judgement when their appeal succeeds as was held in *Masisi Mwita V Damaris Wanjiku Njeri* [2016] ekl. Similarly, it was argued that the subject decretal sum is kshs 3,632,564 which if paid out to the respondents may not be recovered if the appeal is decided in their favour. It was further argued that the respondents have not demonstrated their financial worth when the same was questioned by the applicant as such ascertaining that indeed they are persons of straws.



11. On security for costs, it was submitted that the applicant is willing to provide a bank guarantee from a reputable financial Institution as the same can be used as security. In this they relied on the case of *Elijah Njagi and another V Yvonne Ndunge* [2021] eKLR and submitted that the purpose of security is to ensure the opposing party is duly protected and guaranteed of their money in the event the appeal fails as such that a bank guarantee is one of the ways that such costs are secured.
12. On whether the application was filed timeously, it was argued that judgement in the trial Court was delivered on June 21, 2022, appeal filed on July 8, 2022 and this application was filed on July 21, 2022 as such that the time within which the appeal was preferred and application filed was not inordinate.
13. In conclusion, the applicant beseeched this court to allow its application, arguing that it has met the threshold for granting of stay of execution orders as provided for under order 42 Rule 6 of the Civil Procedure Rules.

### **Respondent's Submissions.**

14. The respondent equally submitted that for the applicant to secure stay of execution orders, it must satisfy this court of all the condition under orders 42 rule 6 of the Civil Procedure Rules. On substantial loss, it was submitted that financial capability alone cannot be a ground upon which a party can claim substantial loss. To support that argument, they relied on the case of *Kenya Shell Limited V Benjamin Karuga & Ruth Wairimu Karuga* [1982-1988] I KAR 1018. Where the court held that:

“It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay...”
15. The respondent further emphasized on the above point by citing several cases including the case of *Vincent Muyuka Ashibundu V Action Aid Kenya and the case of Machira t/a Machira and company advocates v East African Standard* no 2 [2002] KLR 63.
16. The respondents submitted further that in the event that the court is inclined to allow the application herein then to order the applicant to pay half of the decretal sum forthwith and deposit the balance in an interest earning account in the joint names of the advocates on record herein.
17. In conclusion the respondents submitted that the application herein has no merit and urged this court to dismiss it with costs to them.
18. I have considered the averments of the parties herein. Order 42 rule 6(2) (a) of the Civil Procedure Rules provides parameters the court will grant in granting orders of stay and provides as follows;-

“(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay;”
19. In the current application, the applicant has sought stay on ground that they have filed an appeal.
20. Indeed the aspect of filing an appeal is good reason to allow stay so that the appeal is not rendered nugatory in case of success.
21. This application has been filed timeously as per order 42.
22. The only other consideration concerns security which the respondent submitted should be considered if the application is allowed.



23. I find that the application is merited given that there is an appeal that has been filed.
24. I will therefore allow the application on the condition that the applicant deposits in a joint interest earning account held in joint names of counsels on record the decretal sum within 90 days.
25. In default execution may proceed.

**RULING DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022.**

**HON LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

**Wainaina for respondent – present**

**Ngugi holding brief for Odhiambo for appellants – present**

**Court assistant - Fred**

