



**Kenya Union of Sugar Plantation and Allied Workers v West Kenya
Sugar Company Limited (Employment and Labour Relations Cause
40 of 2021) [2022] KEELRC 13393 (KLR) (2 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13393 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS CAUSE 40 OF 2021**

**JW KELI, J
DECEMBER 2, 2022**

BETWEEN

**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKERS CLAIMANT**

AND

WEST KENYA SUGAR COMPANY LIMITED RESPONDENT

RULING

1. The Respondent, following Judgment of the Court delivered on the July 21, 2022 filed in court Notice of Motion Application dated October 25, 2022 seeking the following orders:-
 - a. That the Application herein be certified urgent, service thereof be dispensed with and the same be heard exparte in the first instance.
 - b. That the Honourable court be pleased to stay the execution of the Decree from the judgement delivered by Hon L Justice JW Keli on July 21, 2022 in Bungoma ELRC Cause No 40 of 2021 – Kenya Union of Sugar Plantation & Allied Workers -vs- West Kenya Sugar Company Limited pending the inter partes hearing and determination of this Application.
 - c. That the Honourable court be pleased to stay the execution of the Decree from the judgment delivered by Hon L Justice J W Keli on July 21, 2022 in Bungoma ELRC Cause No 40 of 2021 – Kenya Union of Sugar Plantation & Allied Workers -vs- West Kenya Sugar Company Limited pending the hearing and determination of the Respondent’s intended Appeal.
 - d. That the Honourable court be pleased to order the Respondent to deposit to the court the total Decretal amount of Kshs 807,906.50 or any part thereof as the court may deem fit, as security pending the hearing and determination of the intended appeal.



- e. That the court costs of this Application be provided for.
2. The prayers Nos 1 and 2 are spent.
3. The Application is not opposed.
4. The Application is brought under Order 42 Rule 6 of the Civil Procedure Rules, Order 51 rules of Civil Procedure Rules, Sections 1A, 1B and 3 A of the Civil Procedure Act Cap 21 Laws of Kenya.
5. In the interest of justice and to save on precious judicial time, despite the absence of the parties on date of interpartes hearing, the court proceeded to issue its decision on merit on the Application before it.
6. Order 42 (6) (2) of the Civil Procedure Rules sets two key conditions for grant of stay pending appeal outcome:-
 1. 'That substantial loss may result to the Applicant unless the order is made and application is made without unnecessary delay.
 2. Such security as the court order for the due performance of such decree as order as may ultimately be binding on her has been given by the Applicant.'
7. On the 1st limb of substantial loss. The Applicant pleaded that the grievants informed the court during the trial that they had no jobs and therefore the respondent is apprehensive if stay is not granted and execution of the decree of the court , the respondent will have no means of recovering the decretal amount should it succeed in the intended appeal. The court had to balance the interest of the parties by taking into consideration the question of possible substantial loss to the Applicant and the right of the claimant to enjoy fruits of its judgment. The Claimant did not respond to the application. The court finds then the fear of the respondent was not rebutted.
8. On the 2nd limb of Order 42 Rule 6 of the Civil Procedure Rules requiring security of performance as a condition for grant of stay. The applicant in their application have sought order to deposit the entire decretal amount under the judgment delivered on the July 21, 2022 of Kshs 807,906.50/- for the 1st and 2nd grievant be deposited in court pending the hearing and determination of the intended appeal.
9. The Court of Appeal has settled the principles for stay of execution in the case cited by Justice Ongudi in MFI Document Solutions Ltd v Paretto Printing Works Limited (2021)eKLR of Butt -vs Rent Restriction Tribunal (1982) KLR 417 where the Court of Appeal gave guidance on how a court should exercise discretion in an application for stay of execution and held that:-
 1. The power of the court to grant or refusal an application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle is granting or reusing a stay is : If there is no other overwhelming hindrance , a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge 's discretion. (sic)(trial court judgement).
 3. A judge should not refuse a stay if there is a good grounds for granting it merely because in his opinion a better remedy may be available to the applicant at the end of the proceedings.
 4. The court in exercising its powers under order XLI rule 4 (2) (b) of the civil procedure Rules can order security upon application by either party or on its



own motion. Failure to put security of costs as ordered with cause the order for stay of execution to lapse’.

10. The Decree/Judgement sought to be challenged in the instant application is a monetary decree. Costs and Interest can adequately cover any prejudice the Respondent may suffer if the Application is granted. The Applicant stated it would meet any conditions as to security if the application for stay is granted.

Conclusion

11. I find merit in the Notice of Motion Application filed in court on October 25, 2022 and issue the following Orders:-
 1. An order of stay of execution of the Judgment and/or Decree of the court in Bungoma ELRC Claim No 40 OF 2021 Kenya Union of Sugar Plantation and Allied Workers v West Kenya Sugar Company Limited pending the filing, hearing and determination of the intended appeal to the Court of Appeal on condition that the total decretal sum of Kshs 807,906.50/- is deposited in court within 30 days of this order.
 2. Failure to comply with the deposit will lead to automatic vacation of the order No 1 above.
 3. No order as to costs.
 4. It is so ordered.

WRITTEN, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 2ND DECEMBER 2022.

J. W. KELI,

JUDGE.

In the presence of:-

Court Assistant – Brenda Wesonga

Applicant:-Absent

Respondent:- Absent

Court Order : Notice to issue.

J.W KELI,

JUDGE.

