



REPUBLIC OF KENYA



**Gordon Davis Security System Limited v Amos & 8 others (Appeal  
E007 of 2021) [2021] KEELRC 2417 (KLR) (29 July 2021) (Ruling)**

*Gordon Davis Security System Limited v John Omwaka Amos & 8 others [2021] eKLR*

Neutral citation: [2021] KEELRC 2417 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E007 OF 2021  
MN NDUMA, J  
JULY 29, 2021**

**BETWEEN**

**GORDON DAVIS SECURITY SYSTEM LIMITED ..... APPELLANT**

**AND**

**JOHN OMWAKA AMOS ..... 1<sup>ST</sup> RESPONDENT**  
**RICHARD MAYNI ERANTI ..... 2<sup>ND</sup> RESPONDENT**  
**PAUL ODHIAMBO OCHIENG ..... 3<sup>RD</sup> RESPONDENT**  
**WYCLIFFE IDANYUKU MUDANYA ..... 4<sup>TH</sup> RESPONDENT**  
**MOSES OUMA SIKHONGO ..... 5<sup>TH</sup> RESPONDENT**  
**PETER GITAHU KAHUKI ..... 6<sup>TH</sup> RESPONDENT**  
**GEORGE OKELLO YAGA ..... 7<sup>TH</sup> RESPONDENT**  
**EPHAN MAIN MWANGI ..... 8<sup>TH</sup> RESPONDENT**  
**DANIEL KHAMALA WANJALA ..... 9<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant in the application dated 2<sup>nd</sup> February, 2021 prays for an order in the following terms:-
  1. Spent
  2. Spent
  3. Spent



4. The Court be pleased to grant leave to the Applicant to appeal out of time against the judgment made by the Hon. Mr. Edgar Kagoni (Principal Magistrate) on the 24<sup>th</sup> November, 2020 in Nairobi CMEL 717 of 2018.
5. That said leave do operate as a stay of all proceedings.
6. Costs of the application.
2. The application is premised on grounds 1 to 12 set out on the face of the Notice of Motion the gravamen of which is that judgment by the trial Court was delivered on 24<sup>th</sup> November, 2020 during prime period of the second wave of the COVID - 19 pandemic.
3. That the applicant's advocates were not able to attend Court despite receiving notice of the date of judgment delivered in favour of the claimant.
4. The claimant's Advocates sent a notice of execution on 15/12/2020 to the Advocate for the applicant and the applicant instructed the Advocates to note an appeal on 29/1/2021.
5. That by that time, the period to file notice of appeal had run out.  
However, the applicant filed notice of Appeal and requested for typed proceedings.
6. That the applicant should not be punished for the mistake by the advocate.
7. The Application is buttressed by a supporting affidavit of Wycliffe Sudy Ekirapa, the Managing Director of the applicant who attests that they were informed of the judgment by their advocate when time to file appeal had expired. That it is in the interest of justice that they be allowed to file an appeal. That the appeal is arguable and the delay is not inordinate. That the applicant stands to suffer substantial loss if stay is not granted and the appeal is eventually successful.
8. That application is opposed by a replying affidavit of Willis Wetaba, the advocate for the claimant who deposes that the advocates for the applicants were properly served with the suit but failed to file a defence. That no application was filed for condonation by the Court to file statement of defence out of time.
9. That the applicant participated in cross-examination of one witness and did not attend Court again thereafter.
10. That the applicant failed to file submissions despite being served with notices several times indicating date of judgment.
11. The judgment was delivered virtually and the corona excuse is not valid.
12. That in the event a stay is granted, the applicant be ordered to deposit the decretal sum in an interest earning account.
13. That the intended appeal has no prospects of success.
14. The decision to certify the matter as undefended was made at pre-trial stage and did not attract any application to set the order aside or for it to be reviewed.
15. That the application lacks merit and it be dismissed.
16. The Court has carefully considered the application, replying affidavit and written submissions and is of the considered view and finding that the delay in filing the appeal was inadvertent on the part of



counsel, and the Court does not wish to visit this on the applicant. That the delay was not inordinate and the appeal is arguable.

17. The Court relies on the decision in *Feroz Begum Qureshi and Another –vs- Maganbhai Patel and Others* [1964] E.A. 633 to find that there is good cause to allow the application for filing of the appeal out of time.
18. Regarding the issue of stay of execution pending filing and determination of the intended appeal the Court having considered the case of *First American Bank Limited –Vs- Gulab P. Shah & 2 Others - Nairobi (Milimani) HCCC No. 2255 of 2000* [2002] I EA 65 considers the application meritorious and grants the stay pending the intended appeal.
19. In the final analysis the Court makes the following orders:-
  - a. Leave is granted to the applicant to appeal out of time against the judgment made by Hon. Mr. Edgar Kagoni (Principal Magistrate) on the 24<sup>th</sup> of November, 2020 in Nairobi CMEL 717 of 2018.
  - b. The said leave do operate as stay of all proceedings provided the appeal is filed within the next 30 days from date of this ruling.
  - c. The applicant to deposit in an interest earning account in the joint names of the counsel for the applicant and that of the respondents the decretal sum within 30 days of this ruling failing which the stay of execution of the judgment and decree to expire automatically.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY, 2021**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. 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 has 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 18 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.

Appearances:-

MAW Advocates

LLP for the Applicant

Wetaba Were & Associates Advocates for the claimant/Respondent

Ekale – Court clerk.

