



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 165 OF 2017**

**CELESTINE CHEMTAI .....CLAIMANT**

**v**

**KAIMOSI TEA ESTATES LIMITED.....RESPONDENT**

**RULING**

1. In a judgment delivered on 14th April 2021, the Court entered judgment in favour of Celestine Chemtai (the Claimant) and awarded her the equivalent of 2-months' salary in lieu of notice and *pro-rata* leave for 2015, together with interest and half of the costs of the suit.
2. The total award to the Claimant before interest and costs was Kshs 28,396/90.
3. Kaimosi Tea Estates Ltd (the Respondent) was dissatisfied, and it filed a Notice of Appeal on 28th April 2021.
4. On 4th May 2021, the Respondent filed a Motion seeking orders:
  - (1) ...
  - (2) ...
  - (3) THAT this Honourable Court be pleased to stay execution of the judgment dated 14<sup>th</sup> April 2021 pending the hearing and determination of the intended appeal.
  - (4) THAT the costs of this application be provided for.
5. Pursuant to Court orders, the Respondent deposited security on 17th May 2021 and on 19th May 2021, the Claimant filed a replying affidavit in opposition to the Motion.
6. The Respondent filed its submissions on 24th June 2021, while the Claimant filed her submissions on 14th July 2021.
7. The Court has considered the Motion, affidavits and submissions.
8. The threshold to be met by a party seeking stay of execution pending appeal is a well-trodden path.
9. The principles are derivatives of order 42 Rules 6 of the Civil Procedure Rules, and in brief, these are a demonstration that substantial loss may be occasioned if the stay of execution is not granted; application has been made without inordinate delay and provision of security for the due performance of the decree.
10. The Respondent contended that if the execution were to proceed, it would not be able to recover the monies paid to the Claimant were the appeal were to succeed, thus rendering the appeal nugatory.
11. Although it is not within the province of this Court to determine whether the appeal has overwhelming chances of success, the Respondent asserted that the Claimant had not pleaded the heads of reliefs awarded by the Court.
12. The Claimant was, however, of the view that the Motion was fatally defective and premature as costs had not been ascertained and that that it was a delaying tactic.

13. The Court has looked at the Statement of Claim, which was filed on 28th April 2017.

14. Among the heads of reliefs sought were 2-months' salary in lieu of notice and *pro-rata* leave. The Court granted these reliefs, and therefore the contention that they were not pleaded is not correct.

15. On the merits of the Motion, the Respondent has not, despite asserting that it would suffer substantial loss if the stay were not granted, given any particulars of the loss or deposed as to the Claimant's means as observed in *Machira t/a Machira & Co. Advocates v East African Standard* (No. 2) (2002) KLR 63 that:

In this kind of application for stay, it is not enough for the applicant to merely state that substantial loss will result. He must prove specific details and particulars .... Where no pecuniary or tangible loss is shown to the satisfaction of the Court, the Court will not grant a stay ....

16. The Respondent herein did not satisfy the test for the grant of stay pending appeal.

17. The Motion is dismissed with further costs.

18. The monies deposited in Court should be released to the Claimant's advocate if the Respondent does not secure further orders from the Court of Appeal within 30 days.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 2ND DAY OF DECEMBER 2021.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For Claimant	Mwakio, Kirwa & Co. Advocates
For Respondent	Wachira Wanjiru & Co. Advocates
Court Assistant	Chrispo Aura