



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 59 OF 2014**

**DAVID MBUGUA**

**CLAIMANT**

**V**

**KEROCHE BREWERIES LTD**

**RESPONDENT**

**RULING**

1. On 20 February 2015, the Court delivered judgment in which it held that the termination of the Claimant's employment by the Respondent was procedurally unfair and awarded him Kshs 1,080,000/-.
2. The Respondent felt aggrieved with the judgment and on 26 February 2015, it filed a Notice of Appeal. Subsequently, on 24 April 2015, the Respondent filed a motion under urgency seeking
  - 1.... (spent)
  - 2.... (spent)
  3. This Honourable Court do issue a stay of execution of the award and enforcement of the decree and subsequent warrants of attachment issued against the Applicant herein pending the hearing and determination of the intended appeal.
3. The motion was heard *inter partes* on 28 April 2015.
4. The Respondent cites two main grounds for seeking the stay of execution. These are, firstly that if the stay is not granted it stands to suffer substantial loss and secondly, that the Claimant may not be in a position to refund the decretal amount if execution proceeds.
5. The Respondent submitted that it is willing to abide by any conditions set by the Court as to security for the due performance of the decree.
6. The Respondent further submitted that there was a risk its 2 motor vehicles attached on 22 April 2015 would be sold/auctioned
7. The Claimant opposed the motion and relied on his replying affidavit filed in Court on 27 April 2015.
8. According to the Claimant, the Respondent had gone into slumber and only woke up when auctioneers moved in to proclaim its properties despite serving a Notice of Appeal on 3 March 2015, and therefore the application for stay was not filed timeously.
9. The Claimant further deposed that the Respondent had not demonstrated what harm it would suffer were stay to be declined; and that it had not proved that he could not repay the decretal amount.
10. The legal principles for grant of stay of execution are now legion and need no detailed examination.
11. The Respondent has not shown what substantial loss it would suffer were the Court to decline its

- invitation to stay the execution which has commenced.
12. Odunga J dealt with the substantial loss issue in *Republic v The Commissioner for Investigations and Enforcement ex parte Wananchi Group Kenya Ltd* (2014) eKLR. The judge stated the issue of substantial loss is a crucial issue in such applications that it ought to come out clearly in the supporting affidavit....it is therefore not sufficient to merely state that the decretal sum is a lot of money and the applicant would suffer loss if the money is paid. In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted.....
  13. The Respondent has not shown the loss it would suffer considering that the Claimant already has a legitimate judgment in his favour, pronounced after hearing both sides.
  14. Further, merely stating that the decree holder/Claimant would not be in a position to repay the decretal sum were the appeal to succeed is not enough. The contention that a decree holder is a man of straw will not do.
  15. In this regard, it would be appropriate to mention the dicta by Emukule J in *Cosmas Kipkoech Sigei v Madrugada Ltd & Ar* (2010) eKLR that a stay will not be made on the ground that the decree holder is a pauper, and will therefore be unable to refund the decretal sum if paid to him....
  16. The motion therefore stands to be dismissed, but I must make an observation concerning attempts to short circuit the execution procedures.
  17. Section 94 of the Civil Procedure Act provides that Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to costs; and as to so much thereof as relates to costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.
  18. The procedure for execution of the judgments, orders and decrees of this Court are those applicable in the High Court and therefore section 94 of the Civil Procedure Act is implicated in this case.
  19. In my view, the import of the section is that execution should not issue before taxation of costs where costs have been awarded to the succeeding party unless the Court gives leave.
  20. In the instant case, the Claimant moved to execute before the costs had been ascertained through taxation. Order 22 rule 7 contemplates that the amount of costs should also be included in the application for execution.
  21. That was irregular and for this irregularity, the Claimant should meet the auctioneer's charges.

### **Orders**

22. In conclusion, the Court dismisses the motion dated 24 April 2015 with an order that each party bears own costs, and further the Claimant to meet the auctioneer's charges.

**Delivered, dated and signed in Nakuru on this 29<sup>th</sup> day of May 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant            Ms. Njoroge instructed by Nancy W. Njoroge & Co. Advocates

For Respondent        Ms. Kilu instructed by Ndungu Karanja & Co. Advocates

Court Assistant        Nixon