



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 391 OF 2006

1. **DICKSON ISABWA ANGALUKI**
2. **PHILLIP PENDOVO MWIMALI**
3. **ERIC MAMBUYA NANDWA..... APPELLANTS**

VERSUS

1. **UKWALA SUPERMARKETS LTD**
2. **ROHIT SHAH**
3. **VINCENT ONYANGO.....RESPONDENTS**

RULING

1. The Appellants herein were the plaintiffs in the lower court. The Respondents were the defendants. In their suit the Appellants had sought damages for unlawful confinement/false imprisonment. They had also sought their terminal and/or statutory dues under the **Regulation of Wages and Conditions of Employment Act, Cap. 229**.

2. The lower court entered judgment for the Appellants against the 1st and 3rd Respondents. The court awarded each of them general damages of KShs 20,000/00 plus costs and interest. Their claims for terminal and/or statutory dues were dismissed. Their suit against the 2nd Respondent was dismissed with costs.

3. The Appellants appealed against quantum, their complaint being that the awards were too low. They also appealed against dismissal of their claims for terminal and/or statutory dues. There was no cross-appeal by the 1st or 3rd Respondents on liability.

4. The appeal was heard. In a **judgment dated and delivered on 19th March 2013** (Onyancha, J) the appeal was allowed in its entirety. The awards of the lower court were set aside and the following awards substituted in their place for each Appellant –

(i) **General damages for unlawful**

- arrest and detention.KShs 400,000/00
- (ii) Leave allowance.....14,400/00
- (iii) Severance allowance7,200/00
- (iv) Payment in lieu of notice3,600/00

5. The 1st and 3rd Respondents have in their turn appealed to the **Court of Appeal** against this appellate judgment of Onyancha, J. Pending hearing and determination of their appeal they have sought by **notice of motion dated 3rd April 2013** stay of execution of the decree. The Appellants have opposed the application.

6. I have read the supporting and replying affidavits and given due consideration to the submissions of the learned counsels appearing. I have also perused the court record.

7. On 15th May 2013 interim stay of execution was granted by consent upon the following conditions –

- (i) That the Respondents/Applicants shall within 14 days of that date deposit in a joint interest-earning account the decretal sum (for purposes of the order KShs 2.5 million).
- (ii) That such joint account shall be opened in the names of the advocates on record for the parties with **Chase Bank, Riverside Drive** branch.
- (iii) That in default of such deposit the interim stay to lapse.

8. At the hearing of the application on 9th July 2013 the Court was informed that the 1st and 3rd Respondents met the conditions. The Court was also informed that the KShs 20,000/00 awarded to each Appellant by the lower court was paid to them by the 1st and 3rd Respondents on a without prejudice basis.

9. Ordinarily the Court will not grant stay of execution of a money decree pending appeal unless substantial loss is demonstrated by the applicant. Substantial loss may be inability to recover, or undue difficulty in recovering, from the respondent the decretal sum in the event that the appeal succeeds, thus rendering the appeal nugatory.

10. The circumstances of the present case are somewhat peculiar. The original awards by the lower court were paid to the Appellants. The Appellants' appeal was partly against those awards. This court allowed the appeal and enhanced the awards very substantially. The 1st and 3rd Respondents have exercised their right of a second appeal. It will be best that the **Court of Appeal** pronounces itself upon the issues in controversy.

11. In the meantime the decretal sums (as enhanced and awarded by this Court) are secure as the same have been deposited in a joint interest-earning account. The 1st and 3rd Respondents have expressed fear that they may not be able to recover the decretal sums from the Appellants if paid to them in the event that they succeed in their appeal to the **Court of Appeal**. The Court was informed that the 2nd Respondent has complained that the Appellants have not paid his costs as awarded by the lower court, and that he applied herein for security of his costs, and further, that a ruling on that issue is pending before Onyancha, J.

12. In all these circumstances, I am persuaded that the just and convenient thing to do is to allow the application and grant stay of execution of the decree pending disposal of the appeal to the **Court of Appeal**. The security already given in the form of deposit of the decretal sum in the joint interest-earning account will remain in place. The parties shall have liberty to apply. Costs of the application shall be in

the cause. Those shall be the orders of the Court.

DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF OCTOBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2013