



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: OUKO, (P), ASIKE-MAKHANDIA & KIAGE, JJ.A.)

CIVIL APPLICATION NO. E047 OF 2021

BETWEEN

NATION MEDIA GROUP LIMITED.....APPLICANT

AND

MUGUMO MUNENE.....RESPONDENT

(Being an application for stay of execution of the entire decision contained in the Judgment of the Environment and Labour Relations Court at Nairobi (Lady Justice H. Wasilwa, J.) delivered on 11th November, 2020 in ELRC Cause No. 975 of 2016)

RULING OF THE COURT

The applicant wishes to appeal against the decision of the Employment and Labour Relations Court (H. Wasilwa, J.) made on 11th November, 2020 in which it was found to have unfairly terminated without notice the employment of the respondent and ordered to pay him 10 months' salary amounting to Kshs. 3,844,110 as compensation for unfair termination, costs of the suit and interest at court rates with effect from the date of the judgement.

The applicant, in the meantime, has moved to this Court under **Rule 5(2)(b)** of the Court of Appeal Rules asking that the execution of the above orders be stayed, pending the lodgement and determination of the appeal.

To satisfy the two principles under that rule, the applicant has urged us to find that, on account of the fact that there was no proof that the respondent's termination was unfair, among other grounds, the appeal is arguable; and secondly, that if the sum awarded is paid over to the respondent before the determination of the appeal, and if the appeal was to succeed, that success would be otiose.

Instead, the applicant has prayed that should we be inclined to grant the application it would be ready to deposit the sum in question in a joint interest earning account, in the names of the advocates for the parties.

The respondent for his part finds this application a waste of Court's time, frivolous and a misplaced venture because the process leading to execution has not even commenced; and that the applicant will be appraised of every step in executing the decree.

Further, the respondent reminds the applicant that he is not a man of straw, being a Group Account Director with Oxygene Marking Communications.

Finally, he has pleaded that should we be minded to grant the application, we may consider granting it on condition that the decretal sum be deposited in an account held jointly by his and the applicant's advocates.

Whereas we are satisfied that this application meets the two limbs of **Rule 5(2)(b)**, but we are minded to grant a temporary order of stay of execution of the decree in the Employment and Labour Relations Court Cause No. 975 OF 2019, on condition that the applicant shall, within thirty (30) days of this ruling, deposit the decretal sum into a joint interest-earning account in the names of its advocates and the respondent's advocate, failing which, these orders shall lapse without further orders.

It is in the applicant's interest to ensure that the appeal is lodged and heard without delay.

Costs to abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

W. OUKO, (P)

.....

JUDGE OF APPEAL

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

P.O. KIAGE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR