



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU, SICHALE & J. MOHAMMED, JJ.A.)

CIVIL APPLICATION NO. NAIE355 OF 2020

BETWEEN

NATIONAL BANK OF KENYA LIMITED.....APPLICANT

AND

MUNIR SHEIKH AKHMED..... RESPONDENT

(Being an application for stay of execution of the judgment and decree pending the determination of an intended appeal against the judgment of the Employment & Labour Relations Court at Nairobi (Ongaya, J) dated 9th October, 2020

in

ELRC NO. 117 OF 2018

RULING OF THE COURT

[1] By a judgment dated 9th October, 2020, the Employment & Labour Relations Court (E&LRC) (Ongaya, J) delivered a judgment in which it, *inter alia*, made a declaration that the termination of employment of the respondent **Munir Sheikh Ahmed**, by the applicant **National Bank of Kenya Limited**, was un-procedural, unfair, unlawful and wrongful, and awarded the respondent Kshs.26,520,000 (less PAYE due).

[2] The applicant has now moved to this Court seeking an order staying execution of the judgment of the E&LRC pending the hearing and determination of an intended appeal. The applicant has already filed a notice of appeal the applicant's motion is supported by an affidavit sworn by **Rodgers Mugumi**, its Director, Human Resource in which it is contended that the intended appeal raises serious arguable issues. The applicant is apprehensive that if the order of stay of execution is not granted the appeal is likely to be rendered nugatory as the respondent may not be able to pay back the decretal sum if paid to him.

[3] The principles upon which an application for stay of execution pending appeal under Rule 5(2)(b) of the Court Rules is considered, have been reinstated in many decisions of this Court. *In Ahmed Musa Ismail -vs- Kumba Ole Mtamorua & 4 Others [2014] eKLR*, this Court stated:

“The principles upon which we exercise our jurisdiction under Rule 5(2)(b) of the Court of Appeal Rules, are notorious. See, for instance, Dhiman -vs- Shah [2008] KLR 165, Bob Morgan Systems Limited & Another -vs- Johns [2004] 1KLR 194. An applicant must show that he has an arguable appeal and further that unless we grant the orders sought, his appeal be, if successful will be rendered nugatory. An arguable appeal may not raise multiplicity of explorable points, a single one may suffice. That point or points need not be such as must necessarily succeed on full consideration of the appeal - it is enough that it is a point on which there can be a bona fide question to be exploit and answered within the context of an appellate adjudication. The second limb, and both must be established is an indication that stays or injunctions are not automatic. Rather they are granted to preserve the integrity of the appellate process so as not to render any eventual success a mere pyrrhic victory devoid of substance or succour by reason of intervening loss, harm or destruction that turns the appeal into a mere academic ritual.”

[4] From the contending affidavits deposed by the parties, it is not disputed that the respondent's employment was terminated by the applicant. There is contention regarding the propriety of the process that was followed in terminating the respondent's employment. It is clear that the appeal does raise arguable issues arising from that process. As stated in the afore quoted decisions of this Court, a single arguable issue is sufficient.

[5] As regards the nugatory aspect, the amount of Kshs.26,520,000 awarded to the respondent, is a colossal amount, and the possibility of the respondent's having difficulties to repay this sum should an order of stay of execution not be granted, is not far-fetched.

[6] In the circumstances, we find that the applicant has satisfied the twin principles for granting the order of stay of execution under **Rule 5(2)(b)** of the **Court of Appeal Rules**.

[7] Accordingly, we allow the application dated 11th October, 2020 and order that stay of execution of the judgment of the ELRC Court dated 9th October, 2020 shall issue pending the hearing and determination of the applicant's appeal.

Costs of the motion shall be in the appeal.

Dated and Delivered at Nairobi this 19th day of March, 2021.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR