



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MUSINGA, GATEMBU & MURGOR, JJ.A)

CIVIL APPEAL (APPLICATION) NO. 40 OF 2016

KENYA FOREST SERVICE APPLICANT

VERSUS

TIMON OTIENO MBOGA RESPONDENT

(An Application from the Judgment of the High Court of Kenya at Kisumu, (M. Onyango, J.) dated 5th June, 2015

in

EMPLOYMENT AND LABOUR CAUSE NO. 2 OF 2014)

RULING OF THE COURT

1. On 2nd August 2016, the applicant lodged an application dated 1st August 2016 under Sections 3A and 3B of the Appellate Jurisdiction Act and Rule 5(2)(b) of the Rules of the Court. In that application the applicant sought an order of stay of execution of the judgment of the Employment and Labour Relations Court delivered on 5th June 2015 pending the hearing and determination of an intended appeal. That application was certified as urgent and fixed for hearing on 17th August 2016. That application could not, however, be heard on that date by reason of the failure on the part of the applicant to serve the application on the respondent. We accordingly adjourned the application and directed that a hearing date for the same be fixed for hearing in the registry. We understand it is now scheduled for hearing on 7th December 2016.

2. On 7th September 2016, the applicant filed yet another application dated 6th September 2016, also presented under Sections 3A and 3B of the Appellate Jurisdiction Act and Rule 5(2)(b) of the Rules of the Court. That is the application that is the subject of this ruling. In this later application, the applicant seeks an order of stay of execution of the judgment of Industrial Court delivered on 5th June 2015 pending the hearing and determination of the pending application dated 1st August 2016. The applicant states that on 5th September, 2016 Auctioneers proclaimed its assets.

3. We heard Mr. Nyamweya, learned counsel for the applicant, as well as Mr. D. Anyul, learned counsel for the respondent, on the application dated 6th September 2016. We have also considered the affidavit sworn by James Mamboleo on 6th September 2016 in support of that application as well as the replying affidavit sworn by Dick Anyul on 28th September 2016 in opposition to that application.

4. We agree with Mr. Anyul that the application dated 6th September 2016 is irregular, having been filed when another application seeking the same reliefs is pending. Appreciating as we do that circumstances on the ground may have changed warranting an early hearing date, we do not think that justifies a multiplicity of applications. In our view, what the applicant should have done was to seek an expedited hearing for the application dated 1st August 2016. Being of that view, we order that the application dated 6th September 2016 be and is hereby struck out. We further direct the Deputy Registrar of the Court to reschedule the date of the hearing of the applicant's application dated 1st August 2016 so that it is heard within the next 14 days. The respondent shall have the costs of the application dated 6th September 2016.

Orders accordingly.

Dated and delivered at Kisumu this 6th day of October, 2016

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

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

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DEPUTY REGISTRAR