



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 281 OF 2016

KENYA SCIENTIFIC RESEARCH INTERNATIONAL

TECHNICAL AND INSTITUTIONS WORKERS UNION.....CLAIMANT/RESPONDENT

VERSUS

KENYA AGRICULTURAL AND LIVESTOCK

RESEARCH ORGANIZATION.....RESPONDENT/APPLICANT

RULING

1. Before Court is the Respondent's Notice of Motion application dated 24th September, 2021, brought pursuant to Rule 17 and 28 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and Sections 1A, 3A and 63(e) of the Civil Procedure Act.
2. The Respondent/Applicant seeks Orders for extension of time within which to deposit Kshs. 11,087,358/- in compliance with the orders of the court, and thereafter, confirm receipt of **Kenya Shillings Eleven Million, Eighty Thousand, Three Hundred and Fifty-Eight (Kshs. 11,087,358/-)** and the Respondent be deemed to have fully complied with the Court Orders given on 1st July, 2021.
3. The Respondent further seeks that the warrants of attachment issued on 17th September, 2021, and the proclamation notice dated 21st September, 2021, by Intime Auctioneers be lifted and set aside. The Respondent also prays for costs of the application to be in the cause.
4. The application is supported by grounds on the face of the motion and the supporting affidavit of DR. ELIUD KIREGER, the Director General of the Respondent.
5. The crux of the application is that the Respondent/Applicant has not been able to timeously comply with the orders issued by the Court on 1st July, 2021, owing to the stringent government financial approval procedures, and for reason of that delay, the Claimant/Respondent has moved to execute the decree herein.
6. The Applicant states that they have now obtained the necessary approvals and have deposited the amount of the security ordered by the Court.
7. The Claimant/Respondent herein has opposed the application vide her replying affidavit dated 5th October, 2021 and filed in Court on 12th October, 2021. The Claimant avers that they had patiently waited for the Respondent to deposit the sum directed by the Court, but that the period allowed lapsed without any action on the part of the Respondent/Applicant and hence their decision to execute the decree.
8. The Claimant avers that the attachment subject of this ruling, was made pursuant to the Applicant's non-compliance, and hence should the court be inclined to grant the orders sought, the Applicant should be directed to meet the Auctioneers costs.
9. Both parties filed submissions and which have been dully considered.

Determination

10. I have considered the application subject of this ruling, the grounds and affidavit in support thereof, the Respondent/Claimant's affidavit in opposition and the Parties' submissions. The issues for determination are:

i. Whether the court should extend time and deem the Applicant as having complied with the orders of the Court, having deposited the security after the period allowed by court.

ii. Whether to lift and set aside the warrants of attachment issued on 17th September, 2021.

11. Order 50, Rule 6 of the Civil Procedure Rules, empowers the court to enlarge the time required for the performance of any acts stipulated in the Rules, notwithstanding the fact that such time has expired. It therefore follows that whether or not to extend time, is a matter of judicial discretion, and which discretion is unfettered. In the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR*, the court had this to say:-

“..... It is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant. “We derive the following as the underlying principles that a court should consider in exercising such discretion: -Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court; A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court; Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis; Where there is a reasonable [cause] for the delay, the same should be expressed to the satisfaction of the court; Whether there would be any prejudice suffered by the respondent, if extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

12. The Orders subject of this ruling were granted on 1st July, 2021, and the period for compliance was 30 days, meaning therefore, that the Respondent/Applicant herein, ought to have complied with the Orders by 1st August, 2021. It did not.

13. The evidence before this court, indicates that the Applicant/Respondent deposited the amount ordered by the Court on 16th August, 2021, which is 15 days later than ordered. The delay is attributed to the stringent government financial approvals, which the Applicant stated were finalized on or about the 10th August, 2021.

14. It is worth noting that the amount of the order herein, has since been deposited in court, and what the Applicant seeks, is to be deemed to have complied with the orders, albeit belatedly.

15. In determining whether or not to grant extension of time, the court considers the length of the delay, the reason(s) for the delay, the degree of prejudice to the respondent, and where possible the chances of the appeal succeeding if the application is granted. (*See Leo Sila Mutiso v Rose Hellen Wangari Mwangi - Civil Application No. Nairobi 255 of 1997 (unreported)*)

16. In light of the foregoing, I find the reason for the delay in complying with the orders of the Court plausible, and exercise my discretion and allow the extension of time, and further deem the Applicant/Respondent to have fully complied with the Court Orders given on 1st July, 2021.

17. The next issue, is whether or not to lift and set aside the warrants of attachment issued on 17th September, 2021. The warrants of attachment subject of this ruling, were issued owing to the Applicant's non-compliance with the orders of this Court, and which orders have now be deemed to have been complied with. The court has no reason not to lift the warrants herein and are hereby lifted and set aside.

18. Consequently, I allow the Applicant's Application dated 24th September, 2021 in the following terms:

a) Extension of time to deposit Kshs. 11,087,358/-, is hereby granted and the Applicant/Respondent is deemed to have fully complied with the Court Orders given on 1st July, 2021.

b) The Warrants of attachment issued on 17th September, 2021 and the Proclamation notice dated 21st September, 2021, by In-Time Auctioneers, are hereby lifted and are set aside.

c) The Applicant/Respondent shall bear the Auctioneer's costs.

19. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 17TH DAY OF FEBRUARY, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

The Claimants/Respondents present in person

N/A for the Respondent/Applicant

