



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAISE NO. 207 OF 2020

(Before Hon. Mr. Ocharo Kebira on 21st March 2022)

STEPHEN MICHUKI.....CLAIMANT

-VERSUS-

EAST AFRICAN SAFARI AIR EXPRESS LIMITED.....RESPONDENT

RULING

1. Through a Notice of Motion Application dated 18th February 2022 expressed to be under the provisions of Order 50 Rule 5 of the Civil Procedure Rules the Respondent/Applicant has sought for the following orders:

a) That there be an extension of the granted stay of execution from the 21 days to 60 days pursuant to the orders made by Justice Ocharo Kebira on February 4th 2022 pending the hearing and determination of the appeal herein.

b) That the costs of the application and incidental to this application do abide the result of the said appeal.

2. The application is grounded on the grounds obtaining on the face of the it, and buttressed by those obtaining on the brief supporting affidavit sworn by one George Kividyoo on the 18th February 2022.

3. The Claimant/Respondent opposes the application upon premise of those grounds obtaining on the affidavit sworn by him on the 7th March 2022.

4. Pursuant to the directions that were given by this Court the parties have filed submissions for and against the application.

5. When the Judgment herein was delivered on the 4th February 2022, counsel for the Respondent/Applicant sought for a stay of execution of the Judgment for 60 days, and leave to appeal against the same.

6. Conscious of the fact that the nature of the Judgment delivered by the Court was one that needed not leave of the Court to be assailed by way of an appeal, the Court addressed its mind only on the issue of the stay. The Court gave the following orders:

“The Respondent is granted a stay of 21 days. If they desire to appeal, they should file a formal application for stay when the appeal is filed.”

7. It is clear from the order, that the stay of execution that was granted was to enable the Respondent/Applicant time to file their application for stay pending appeal pursuant to the provisions of order 42 Rule 6 of the Civil Procedure Rules.

8. There was given no order for stay of execution pending an intended appeal or appeal. There is no order that is extendable therefore. Consequently, I find the Application misguided and mis- anchored.

9. One could expect in the circumstances of this matter the Respondent/Applicant to invoke the provisions of Order 42 that provides for stay of execution of a decree pending appeal, but that is not the case here.

10. Having stated as I have, I will not delve into the submissions by counsel for the parties. They are designed to address an application that is actually not before Court.

11. In the upshot, I dismiss the Respondent's/Applicant's application with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT

NAIROBI THIS 21ST DAY OF MARCH, 2022.

OCHARO KEBIRA

JUDGE

Delivered in presence of:

Akuno for the Respondents.

Mr. Masika for the Petitioner.

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE