



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT ELDORET

CAUSE NO. E022 OF 2021

NAIBERI RIVER CAMPSITE & RESORT....CLAIMANT

VERSUS

ANDREW INJENDI JOMO.....RESPONDENT

RULING

1. By motion dated October, 2021 the applicant sought orders among others that:

a. There be an order of stay of execution of the decree in Eldoret Chief Magistrate Employment and Labour Relations Cause No. 147 of 2019 pending the hearing of this application inter-parties.

b. This Honourable Court to grant Applicant leave to file an appeal out of time against the judgment in Eldoret Chief Magistrate Employment and Labour Relations Cause No. 147 of 2019 delivered on 16th September, 2021.

2. The application was supported by the affidavit of Rebecca Cheluget in which she deponed among others that:

a. That I am the Human Resource Manager of the Applicant.

b. That I am conversant with the facts of this case and I am therefore duly competent to swear this affidavit in support of the application ere before this Honourable Court.

c. That the respondent herein filed a claim against the Applicant being Eldoret Chief Magistrate Employment and Labour Relations Cause No. 147 of 2019 seeking various reliefs.

d. That the matter proceeded to hearing and both parties testified.

e. That the cause was set down for judgment on 25th May, 2021, 2nd of June 2021 and later on 8th of June, 2021 when judgment was not ready.

f. That the trial court thereafter notified the parties that judgment will be delivered on notice.

g. That I am informed by my advocates on record which information I verily believe to be true that they have never been issued with a notice for delivery of judgment.

h. That I am further informed by my advocates on record that on 22nd October, 2021 they received a letter dated 19th October, 2021 from the Respondent's advocates informing them that judgment was delivered on 16th September 2021 in favour of the respondent and respondents advocate was demanding for payment of the Decretal sum. Annexed is a letter dated 19th March 2021 as annexure RC 1.

i. That I am further informed by our advocates on record which information I verily believe to be true that they immediately proceeded to peruse the court file and found a hand written judgment that is not dated. Annexed is a copy of the hand written judgment marked as annexure RC2.

j. That I am further informed by our advocates on record that they then requested for the judgment to be typed for purposes of filing

this application. annexed is copy of the typed judgment marked as annexure RC 3.

k. That the applicant is aggrieved by the whole judgment of the lower court and is desirous of filing an appeal to this Honourable Court.

l. That the time for filing a appeal has however since lapsed.

m. That the applicant has a good appeal that raises triable issue and has high chances of success. Annexed is a copy of the draft memorandum of appeal marked as annexure RC 4.

3. The respondent opposed the application and filed a Replying Affidavit stating among others that:

a. That on 25th February, 2020, the matter proceeded in presence of my advocates on record and the Applicant's advocate and a date for mention to confirm filling of submission of was taken by consent and thereafter a dated for delivery of judgment was taken.

b. That vide a notice dated 26th July, 2021, a notice was issued to the effect that judgment in Eldoret CC No. 147/2019 could be delivered by the Eldoret Chief Magistrate, Court 1, on behalf of the trial court. The said notice was posted on the Eldoret Bar-Bench group which the Applicant's advocates are members. *See annexure marked AIJ 1.)*

c. That my advocates on record extracted a decree on 19th October, 2021 and informed the respondent of the decretal sum vide a letter dated 19th October, 2021. *See Annexure marked AIJ2.)*

d. That the applicant's advocates on record were aware that the judgment would be delivered on notice but choose not keep checking with the registry to confirm if the judgment was delivered or not.

e. That the respondent has never bothered to check on the progress of the matter since 25th May, 2021 when the matter came up for mention to confirm filing of submissions.

f. That nothing precluded the applicant from inquiring in the registry whether judgment had been delivered or not or even trying to check on the online judiciary case tracking system the progress of the matter. The respondent's application is not brought in good faith since they waited up to the last minute for them to act on the matter.

g. that the instant application before court has only been prompted by the intention to begin execution proceedings and nothing else.

h. That in response to the grounds on the face of the application. I wish to state as follows:-

i. That the applicant has not demonstrated substantial loss at all. A mere statement that substantial loss shall be suffered is not enough ground to warrant stay of execution.

ii. No sufficient cause has been tendered in court to warrant grant of stay of execution.

iii. No security has been offered by the applicant.

i. That I know on my own knowledge that no appeal has so far been lodged and/or filed by the respondent against the Judgment on record. The applicant has annexed unfiled memorandum of appeal confirming that the same has been made up with the aim of seeking orders of stay of execution. (See Respondent's annexure marked "RC4".

4. The Court has carefully considered the application, the grounds upon which is brought and the supporting affidavits and is persuaded that reasonable explanation has been offered by the applicant why the appeal was not filed on time. The Court therefore extends time for the applicant to file and serve the appeal within 30 days from the date of this ruling.

5. On the issue of stay the application as drafted did not seek stay of execution pending appeal. It sought stay of execution pending the hearing of this application inter partes.

6. However, in the interest of time and saving of costs of filing another application, the Court will exercise its discretion and under order 42 of the Civil Procedure Rules make a conditional order of stay that the decretal sum be deposited in Courts within 30 days of the ruling herein. In default execution to issue.

7. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 18TH DAY OF MARCH, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

