



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION NO E190 OF 2021

BETWEEN

UNIVERSITY OF NAIROBI..... APPLICANT

VERSUS

BERNARD NYAMAI ILEVE..... RESPONDENT

RULING

1. Judgment was delivered in favour of the Respondent herein, in **Chief Magistrate's Court at Nairobi, MCERC No. 1444 of 2019, Bernard Nyamai Ileve v. University of Nairobi**, on 30th August 2021.

2. The orders granted are: -

- a. The Claimant is entitled to gratuitous pay of Kshs. 1,927,930.
- b. Respondent to bear costs of the Suit.
- c. The interest on [a] to be paid at court rates from the date of filing.

3. The Respondent has filed an Application, dated 25th October 2021, seeking leave to appeal out of time, and stay of execution of Judgment and/or Decree, arising from the Suit in the Lower Court.

4. The Application is based on the Affidavit of Donald B. Kipkorir, Advocate for the Applicant, sworn on 25th October 2021. It is submitted that, the time within which to lodge the Appeal expired. The Applicant was only availed a copy of the Judgment on 11th October 2021. Request for the same was made to the Court on 30th August 2021. The Application was made within a reasonable time of accessing a copy of the Judgment. There is an arguable Appeal with high chances of success, as shown in the exhibited Draft Memorandum of Appeal.

5. The Court granted temporary stay of execution of the Judgment and/or Decree, and directed Parties to file and exchange Written Submissions. Parties confirmed filing and service of Submissions at the last mention on 14th December 2021.

The Court Finds: -

6. The Applicant has moved the Court within reasonable time of obtaining a copy of the Judgment. It applied for a copy of the Judgment on 30th August 2021. A copy was supplied on 11th October 2021. The Application was lodged on 26th October 2021.

7. The exhibited copy of Draft Memorandum of Appeal, discloses there is an arguable Appeal with reasonable chances of success.

8. The Suit before the Trial Court proceeded under Rule 21 of the E&LRC [Procedure] Rules, 2016. There are no prolonged oral proceedings, and the Record of Appeal should not take long to prepare. The Appeal should be heard and disposed of within a reasonable time. The Respondent shall not suffer prejudice, through a prolonged delay, in processing and hearing of the Appeal.

IT IS ORDERED: -

- a. *The Applicant is granted leave to file Appeal out of time.*

b. The Memorandum of Appeal annexed to the Application shall be deemed properly filed, upon payment of the requisite court fees.

c. Judgment and/or Decree of the Trial Court is stayed, pending hearing and determination of the Appeal.

d. Costs in the Appeal.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT MOMBASA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 3RD DAY OF MARCH 2022.

JAMES RIKA

JUDGE