



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT
AT NAIROBI
MISCELLANEOUS APPLICATION NUMBER E189 OF 2021
BETWEEN
UNIVERSITY OF NAIROBI APPLICANT
VERSUS
PATRICK MWANGI NGUNJIRIRESPONDENT
RULING

1. Judgment was delivered on 31st August 2021 in favour of the Respondent, in Nairobi CMEL No. 1579 of 2019, *Patrick Mwangi Njunjiri v. University of Nairobi*.
2. The Applicant seeks, through an Application dated 25th October 2021, leave to file an Appeal out of time, and stay of execution of Judgment and/or Decree of the Trial Court, pending hearing and determination of the Appeal.
3. The Application is based on the Affidavit of the of Applicant's Advocate, Donald B. Kipkorir, sworn on 25th October 2021.
4. Mr. Kipkorir explains that the Applicant applied for a copy of the Judgment, on 1st January 2021. Up to the time of filing the Application, the Applicant had not been supplied with a copy of the Judgment. It is submitted that the Application has been presented without delay. There is an arguable Appeal, with high chances of success.
5. The Respondent opposes the Application, relying on his Affidavit, sworn on 5th November 2021. He states that the Application is an abuse of the court process. There is no Appeal filed, and the Application cannot be allowed without such an Appeal. Judgement was entered correctly, upon review by the Trial Court, of documents availed by the Parties. The Respondent is capable of refunding decretal sum in event the Applicant is successful on Appeal. The Respondent is entitled to fruits of his litigation.
6. Parties agreed to have the Application considered on the basis of their Submissions and Affidavits on record. The matter was last mentioned on 14th December 2021.
7. Temporary stay of execution was granted on 12th November 2021.

The Court Finds: -

8. The Court is not able to assess if there is an arguable Appeal with high chances of success.
9. There is a Draft Memorandum of Appeal, but no copy, typed or handwritten, of the Judgment. Did not the Applicant have access to the handwritten copy of the Judgment? How was it possible to prepare Memorandum of Appeal, without any form of access to the Judgment? It is not possible for the Court to assess the arguability and probability of success of the Intended Appeal, without both copies of the Memorandum of Appeal, and Judgment upon which the Memorandum of Appeal is based. It is not possible to determine if the Intended Appeal will be rendered nugatory, if execution proceeds.
10. The Application does not disclose what was granted by the Trial Court, to the Respondent. It is not in the Supporting Affidavit, or in the Notice of Motion. The orders given in the Judgment are not stated.

11. The prayer for stay of execution is not well-founded and is declined.

12. There is evidence that the Applicant applied for a copy of the Judgment from the Court, on 1st September 2021. As of the date of filing the Application, a copy had not been supplied. The Application was filed on 26th October 2021.

IT IS ORDERED: -

a. The prayer for stay of execution of Judgment and/or Decree of the Trial Court is declined.

b. Leave is granted to file Appeal out of time, and Memorandum of Appeal filed with the Application, shall be deemed as properly filed upon payment of requisite filing fees.

c. Costs in the Appeal.

Dated, signed and released to the Parties electronically, at Mombasa, under Ministry of Health and Judiciary Covid-19 Guidelines, this 3rd day of March 2022.

James Rika

Judge