



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

APPEAL NO. 30 OF 2020

BENTA ACHIENG ODINYO.....APPELLANT/RESPONDENT

VERSUS

UNIVERSITY OF NAIROBI.....RESPONDENT/APPLICANT

RULING

1. The applicant filed a notice of motion application dated 27th May, 2021 seeking the following reliefs: -

(a) This Application be heard urgently ex parte in the first instance.

(b) That this Honourable Court be pleased to stay further proceedings including the taxation of the Respondent's Bill of Costs dated 17th May, 2021 pending the hearing and determination of this application.

(c) That this Honourable Court be pleased to order stay of execution of the decree resulting from Ruling delivered on the 6th of May, 2021 pending the hearing and determination of the intended appeal.

(d) That costs be provided for.

2. The application is premised on grounds set out on the Notice of Motion and in the supporting affidavit of David Mukii Mereka advocate, the nub of which is that the Court delivered a judgment on 6th May, 2021 allowing respondent's Appeal and awarding costs to the Respondent and which decision also affected five other named suits. That the applicant has already filed a notice of Appeal against the said judgment.

3. The respondent has since moved the Court by filing a party and party Bill of costs dated 17th May, 2021 which was slated for hearing on 22nd July, 2021.

4. The judgment only related to a preliminary objection and the Court also ordered that the suits do proceed in the Court below on their merits, hence the filing of the party and party bill of costs is premature and not procedural.

5. That the Court do stay any further proceedings including taxation pending the hearing and determination of the intended Appeal.

6. That the applicant has an arguable appeal with overwhelming chances of success and the same shall be rendered nugatory in the event the bill of costs is taxed.

7. That the application has been brought timeously without any inordinate delay and it be allowed. The applicant had also filed a Preliminary Objection to the taxation of the bill of costs dated 17th June, 2021. The Court is considering both the application and preliminary objection together.

8. The appellant/respondent objects to the application and submits that the suits referred to in the application had wrongly been consolidated in this matter and dismissed by the lower Court but were reinstated by this Court and the suits directed to proceed before a different magistrate.

9. That in this file, there is nothing else pending except for payment of costs in terms of the judgment of the Court.

10. That this application and preliminary objection are a mere ruse to halt or delay taxation of costs.

11. That the application is opposed vide the replying affidavit of Benta Achieng dated 2nd February, 2021.

12. That there was no positive order made in this file and the suits are now pending before the magistrate Court. That no justification has been made to stay taxation of the concluded matter. That taxation of the matter could not possibly render the intended appeal nugatory in any event the respondent being a stable firm of advocates is capable of refunding any costs duly taxed and paid to them. That the application is an abuse of Court process and it be dismissed with costs.

13. The Court has considered the application by the respondent vis a vis the replying affidavit and has not found any merit in the argument that taxation of costs in this file would render the intended appeal nugatory. The Court granted costs to the appellant and referred the rest of the proceedings where they belong in the magistrates' Court.

14. There is no plausible reasons advanced by the applicant to stop the successful appellant from taxing the party and party bill of costs with respect to the Appeal which has been fully determined and is separate from the now reinstated suits before the magistrate Court.

15. Accordingly, the Preliminary Objection and the application to stop taxation of costs by the Appellant lacks merit and are dismissed with costs.

Dated and delivered at Nairobi this 21st day of April, 2022.

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 of the Civil 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.

Mathews N. Nduma

Judge

Appearances

M/s Njoroge for Applicant

Mr. Onenga for Appellant/respondent

Mr. Ekale - Court Assistant