



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

ELRC CAUSE NO. 39 OF 2016

FRANCIS ONINO OPONDO.....1ST CLAIMANT

CELESTINE WAMALWA WEKESA.....2ND CLAIMANT

NDWASHE MIGWI (Suing on their own behalf and on Behalf of 49 others).....3RD CLAIMANT

VERSUS

MAJANI MINGI SISAL ESTATE LIMITED.....1ST RESPONDENT

HARRY HORN.....2ND RESPONDENT

RULING

1. The application before this court is the respondent's applicant's Notice of Motion application dated 4th November, 2020 and filed on 5/11/2020 seeking the following orders;

1. THAT this application be certified as urgent and that the same be heard ex parte in the first instance.
2. THAT service of this application be dispensed with in the first instance due to the urgency of the matter and that there be a stay of execution of the Judgment/decree issued herein on 30th September, 2020 pending the inter-partes hearing and final determination of this application.
3. THAT there be a stay of execution of the Judgment/decree issued herein on 30th September, 2020 pending the hearing and determination of the intended appeal herein lodged.
4. THAT costs of this application be costs in the intended appeal.

2. The application is premised on the following grounds;

1. THAT the respondents being aggrieved with the Judgment delivered herein on 30th September, 2020 intend to appeal against the whole Judgment/decree and have already lodged a Notice of Appeal in the Court of Appeal at Nakuru.
2. THAT the initial 30 days stay of execution granted by the court has since expired and/or lapsed, whereupon the Claimants will commence the execution process of the Judgment/decree.
3. THAT the respondents will require time to prepare a Record of Appeal that will include proceedings of this Honourable Court and this shall not be possible if the Claimants proceed to execute the Judgment/decree issued herein.
4. THAT the intended appeal has high chances of success and the respondents are likely to suffer substantial loss unless the Claimants are in the meantime restrained from executing the Judgment/decree.
5. THAT the intended appeal may be rendered nugatory unless the orders sought herein are granted.
6. THAT the Respondents are ready and willing to furnish such security as this Honourable Court may deem just and fit as a

condition for the issuance of the orders sought.

7. THAT this application has been filed without undue delay.

3. The application is also supported by Supporting Affidavit of the respondent sworn by Dennis Ndeke the Respondent/Applicant's counsel deponed on 4/11/2020.

4. The gist of the application is that the respondents are dissatisfied with the court's Judgment delivered on 30th September 2020 and have preferred an Appeal. They aver that the appeal has high chances of success.

5. The claimant respondents opposed this application through their replying affidavit deponed by the 1st claimant herein Francis Opendo. He avers that the deponent Dennis Ndeke has no authority to swear an affidavit on behalf of the respondents.

6. The respondents also depone that the applicants have not advanced cogent reasons to warrant grant of the orders sought.

7. They aver that the affidavit is a ploy to deny them the fruits of their Judgment. They aver that the respondents is closing down its business in Kenya and they should be ordered to deposit the decretal sum in Kenya.

8. I have considered the averments of the parties herein. Order 42 Rule 6(2) of the CPA state as follows;

(1).....

(2) No order for stay of execution shall be made under subrule (1) unless –

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

9. The order envisages that the applicant must file their application for stay without delay which the applicants herein did.

10. The applicants must also demonstrate they stand to suffer harm if orders are not granted and which the applicants have not demonstrated. Lastly the issue of security is important. The applicants have not offered any security in the matter. However considering that they have already preferred an appeal, in order to preserve the substratum of the appeal, I will grant stay orders as sought on condition that the applicants deposit the entire decretal sum in an interest earning account held in joint name of counsels on record within 30 days. In default execution to proceed. Costs to abide the appeal.

DATED and DELIVERED in open court this 19TH day of JANUARY, 2021.

Hon Lady Justice Hellen Wasilwa

Judge

In the presence of:-

Mr. Mureithi holding brief for Mr. Kisila for applicants present

Ms. Daye holding brief for Mr. Chege for claimants present