



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 547 OF 2018

BETWEEN

- 1. ERASTUS K. GITONGA**
- 2. EDWRAD K. WABWOTO**
- 3. CICILIA W. GITHAIGA**
- 4. JUDITH N. KITHINJI**
- 5. SIMON NGARA.....CLAIMANT**

VERSUS

THE NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY.....RESPONDENT

AND

- 1.LAW SOCIETY OF KENYA**
- 2 THE ATTORNEY-GENERAL.....INTERESTED PARTIES**

RULING

1. The Claimants obtained Judgment against the Respondent on 10th April 2019. Judgment comprises principal amount of Kshs. 13,300,000. It includes also, orders that the Respondent pays monthly non-practice and prosecutorial allowances to the Claimants, and interest.
2. The Respondent filed an Appeal against the decision, at the Court of Appeal. The Respondent also sought an order for stay of execution pending Appeal. The Application seeking this order, is dated 29th May 2019.
3. On 29th July 2019, the Court ordered *inter alia*, that the Respondent is granted conditional order of stay of execution pending hearing and determination of the Application *inter partes*. The condition was that the Respondent would deposit *the decretal sum, plus all the payments accruing under the orders in the Judgment, on monthly basis, in an interest earning account in the joint names of the Applicants and the Claimants, or Claimants’ and Respondent’s Advocates and report be made to the Court on 30th August 2019.*
4. Parties agree that the Respondent has deposited the principal sum of Kshs. 13,300,000 as ordered.
5. There is dispute on interest and monthly allowances payable. The Respondent proposed to pay, through a letter dated 4th February 2020 a total of Kshs. 1,826,000, comprising accrued interest, non-practice allowance and prosecutorial allowance. Its position is that Parties were in negotiation over the accrued interest.
6. The Claimants submit that the Respondent declined to deposit interest accrued from the date of Judgment, 10th April 2020, amounting to Kshs. 1,127,000 as of 16th October 2019. The Respondent also failed to pay monthly allowances as ordered. The Claimants submit that interest is fixed by law, and is not subject to negotiation. Lastly, the Claimants submit that the Record of Appeal filed by the Respondent at

the Court of Appeal, was only filed in September 2020, 7 months after the Judgment, in violation of the 60-day limitation set by the law. Typed and certified proceedings of the Trial Court were ready, by 27th February 2020.

The Court Finds: -

7. The Respondent has not complied in full, with the orders given by Hon. Judge Byram Ongaya, on 29th July 2019. Interest has not been paid. Allowances have not been paid monthly as ordered. The Respondent has however, deposited the principal amount of Kshs. 13,300,000 in an interest earning bank account, held in the name of the Claimants' and the Respondent's Advocates.

8. The Parties have not been able to agree on the interest and allowances payable. The Court estimates as of today, the amount in question is no less than Kshs. 3,000,000. The Respondent has already lodged its Record of Appeal. Whether the Appeal was validly filed, is an issue best left for the Court of Appeal to determine.

9. The Court is satisfied that the Appeal raises weighty matters of the law. The fact that the Attorney-General and the Law Society of Kenya, were added to the trial proceedings, suggests there is considerable weight in the matters in dispute. It is important that those matters are distilled through our appellate system.

IT IS ORDERED: -

a. The Application dated 24th May 2019 is allowed on the condition that the Respondent tops up deposit held by the Advocates for the respective parties, by an amount of Kshs. 3,000,000 within the next 14 days.

b. In default the order [a] made today shall become void.

c. No order on the costs.

Dated and delivered at Nairobi, this 11th day of February 2021.

James Rika

JUDGE