



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1759 OF 2014

SARAH NJERI NGUGI.....CLAIMANT

VERSUS

FIRST CHOICE TOURS AND TRAVEL LIMITED.....RESPONDENT

RULING

The respondent, First Choice Tours and Travel Limited filed application dated 21st February, 2021 under the provisions of Order 42 and Rule 6 of the Civil Procedure Rules and section 1A, 1B and 3A of the Civil Procedure Act and seeking for orders that;

The court to order a stay of execution of the judgement and decree in ELRC No.1759 of 2015 stemming out of the judgement of the court ... delivered on 15th April, 2020.

Prayer 2 and above be granted pending hearing of the respondent/applicant's appeal.

Costs of the application be in the cause.

The application is supported by the Supporting Affidavit of Nazareno Ngare the director of the respondent and on the grounds that judgement herein was entered against the respondent on 15th April, 2020 in the sum of Ksh.793, 647.61 and costs of the suit. The respondent has filed Notice of Appeal and made application for the typed proceedings and judgement so as to prepare the record of appeal. There is an arguable appeal with high chances of success and upon filing the instant application without delay, the orders sought should issue. The bill of costs has since been taxed at ksh.192, 545 and the matter is ripe for execution and if the orders sought are not granted the respondent shall suffered irreparable loss and damage and prejudice and the appeal rendered nugatory.

In reply, the claimant filed the Replying Affidavit of Upendo Allan Ignacious and advocate for the claimant and who avers that he has been in the conduct of the matter and the orders sought by the respondent are in abuse of the court process. Judgement was delivered on 15th April, 2020 and the Notice of Appeal filed 3 months after judgement and the instant application was not filed until 21st February, 2021 a period of over ten (10) months and the delay is not justified and in abuse of court process.

Mr Upendo also avers in reply that the respondent has not satisfied the provisions of Order 42 Rule 6 and failed to demonstrate the nature of loss to be suffered is the orders of stay are not granted. No security is offered and the application is just but a gimmick intended to prolong the execution process and should be dismissed with costs.

Both parties attended and made oral submissions.

The court has considered the application and the affidavits and the oral submissions.

The gist of the application dated 21st February, 2021 is that stay of execution of the judgement delivered on 15th April, 2020 be allowed pending the hearing of the appeal. As set out above, the application is based on the provisions of Order 42 Rule 6 of the Civil Procedure Rules.

On 2nd July, 2020 the respondent filed a Notice of Appeal. This was after a period of 3 months after judgement was delivered on 15th April, 2020. The delay is filing such notice is not addressed.

The application seeking stay of execution is on the grounds that the same be allowed pending the hearing of the appeal. There is no appeal filed and even in a case where there was an intention to file an appeal, no draft memoranda in this regard is attached to the affidavit of Nazareno Ngare. These facts are left bare.

As submitted by the respondent in the case of **Amal Hauliers Limited v Abdulnasir Abukar Hassan [2017] eKLR**, the court in addressing an application seeking stay of execution of the lower court judgement held that;

The conditions to be met before stay is granted are provided by the Rule 6(2) as follows:

“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.”

The respondent, well aware of the threshold to be met in an application seeking stay of execution has not demonstrated the loss to be suffered, if any, where the orders sought are not granted. No security is offered in whatever form in satisfaction of the judgement and there legitimate expectation on the part of the claimant that the judgement of the court will not be frustrated. See **Isaac Gichunge Leakey v Njogu Titus Gichuru [2020] eKLR**.

Primarily, a stay of execution should be granted for a given purpose. It ought not to be for an empty or ploy effort to stall the orders of the court. where there is an appeal such should not be frustrated or negated.

In this regard, the delay obvious in filing the instant application; without any appeal as noted in the orders sought, there being no sufficient cause established for the grant of the orders sought and without any security offered for the due performance of the judgement, the court finds no merit in the instant application.

Accordingly, application dated 21st February, 2021 is hereby dismissed. costs to the claimant.

DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF MARCH, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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