

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1104 OF 2016

PHILIP MUTINDA.....CLAIMANT

VERSUS

LADY LORI (K) LIMITED.....RESPONDENT

RULING

1. The Applicant seeks stay pending appeal. It is not controverted that the factors a Court has to consider in whether to grant a stay or not are what is contained in precedent. The Court appealed from may for sufficient cause order stay of execution of such decree or order and the Court in coming to this decision the court shall consider whether substantial loss may result to the applicant unless the order is made, whether the application has been made without unreasonable delay, and whether such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.

2. There is no doubt that this Court has powers to stay proceedings pending appeal and this jurisdiction is meant to avoid a waste of precious judicial time as well as prevent the court from duplication of efforts and prevent multiplicity of suits and motions being filed and where if the stay is not granted and defendant were to succeed it would render the appeal nugatory. In such applications the Court aims at ensuring that the object of the application is not rendered nugatory and that substantial loss and irreparable harm is not suffered by the applicant once the matter proceeds and the appeal succeeds. Obviously, the application must be made without unreasonable delay. This power is discretionary hence the need to ascertain the promptness of the motion by the party intending to appeal. **In Re Global Tours & Travel Ltd HCWC No. 43 of 2000** (unreported) Ringera J. (as he then was) held that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matter, it should bear in mind such factors as the need for expeditious disposal of case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

3. The Court decree herein involves a sum of US 10,269.23 together with costs and interest. That in my view is not a paltry sum and reflecting the requirement on substantial loss, it would seem that the order that would commend itself for me to make is one allowing the stay pending appeal. However, granted that the sword of justice cuts both ways, the denial of the Claimant of the fruits of his judgment would in my view be counter to the dictates that justice be done to all irrespective of their stature. In the premises the Court will grant stay on condition that the Respondent deposits the entire decretal sum plus interest as accrued to 17th March 2021 in an interest earning account in the joint names of the advocates of the parties within 21 days of this Ruling. If the Respondent does not deposit the funds as ordered through no fault of the Claimant then execution may proceed as the stay order will automatically lapse on such default.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH 2021

NZIOKI WA MAKAU

JUDGE