



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 129 OF 2013

KENYA HOTELS & ALLIED WORKERS

UNION.....CLAIMANT

VERSUS

PRAYING MANTIS LIMITED (OCTOPUS

CLUB).....RESPONDENT

RULING

1. In a judgment delivered on 13 November 2020, the Court awarded some 5 Grievants terminal dues, interests and costs.
2. Praying Mantis Ltd (the Respondent) was not satisfied, and on 12 March 2021, it filed a Motion seeking stay of execution pending hearing and determination of an intended appeal (among other orders).
3. The Court dealt with the Motion *ex-parte* and granted an interim stay of execution pending *an inter-partes* hearing on the condition that the decretal sum of Kshs 2,019,068/- is deposited into Court within 7-days.
4. The condition did not satisfy the Respondent, and on 22 March 2021, it filed another Motion seeking orders:
 1. ...
 2. This Honourable Court be pleased to review its orders issued on the 16 March 2021 by permitting the Respondent/applicant to deposit the title deed of its land parcel Kisumu/Kogony/193 in Court as a substitute for depositing the decretal sum of Kshs 2,019,068 as a precondition of stay pending the hearing and determination of the intended appeal.
 3. The costs of this application be provided.
5. The Union caused a replying affidavit sworn by its Nyanza branch Secretary to be filed on 15 April 2021 in opposition to the Motion. This prompted the Respondent's Managing Director to file a supplementary affidavit on 26 April 2021.
6. The Respondent filed its submissions on the Motion on 26 April 2021, while the Union filed its submissions on 17 May 2021.
7. The Court has considered the Motion, affidavits and submissions.
8. In the supporting affidavit, the Respondent's Managing Director merely asserted that it was not in a position to deposit the decretal sum in Court.
9. When the Union's branch secretary filed the replying affidavit deposing that the Respondent had not demonstrated inability to deposit the decretal sum into Court, the Respondent filed a supplementary affidavit introducing a copy of a bank statement from 10 January 2020 to 12 March 2021.
10. The Court has keenly looked at the bank statement, and the highest amount deposited in the account during the period was Kshs 76,860/-.
11. Further, the statement does not demonstrate that it was the one being used to pay the Grievants salaries during the term of their

employment.

12. The inference which the Court can draw is that the Respondent has other bank accounts which it has not disclosed.

13. The Respondent was asking for an exercise of the Court's discretion. It did not make a candid disclosure.

14. In light of the foregoing, the Court declines to allow the Motion filed in Court on 19 March 2021. It is dismissed with costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 30th day of June 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr Ngame, Industrial Relations Officer

For Respondent Mr Oloo instructed by Bruce Odeny & Co. Advocates

Court Assistant Chrispo Aura