



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1827 OF 2014

BETWEEN

JOB BERNARD MAKANGA CLAIMANT

VERSUS

MULTIMEDIA UNIVERSITY OF KENYA.....RESPONDENT

RULING

1. The Respondent has filed a Notice of Motion dated 14th June 2019, seeking an order that, pending hearing and determination of the Respondent's Intended Appeal at the Court of Appeal, execution of Judgment entered by this Court, on 29th March 2019, is stayed.
2. The Application is supported by the Affidavit of Mumbi Mwiuhurih, Respondent's Legal Officer, sworn on 14th June 2019.
3. It is opposed through the Replying Affidavit of the Claimant, sworn on 1st July 2019.
4. Parties agreed on 4th February 2021, to have the Court consider and determine the Application based on the Affidavits above, and Submissions filed by the Parties. They confirmed filing of Submissions on 11th March 2021.

The Court Finds: -

5. The Respondent has not persuaded the Court that an order staying execution of Judgment, is merited.
6. The Respondent has indicated severally on the record, that it was willing to settle, and was waiting for funds to become available to settle the decree.
7. Judgment was anchored on a consent filed by the Parties. Parties agreed on everything including payment of gratuity. The Respondent's Advocates are recorded to have informed the Court that the Respondent's Council was meeting to finalize settlement.
8. It is noted that the Respondent filed an Application seeking to set aside consent Judgment, which was rejected by the Court on 29th March 2019, culminating in the decree whose execution, the Respondent is asking the Court to stay pending Appeal.
9. It was the ruling of the Trial Court, relying on the Court of Appeal decision in ***Specialized Engineering Limited v. Kenya Commercial Bank Limited [1988] e-KLR***, that Parties recorded binding consent, and that the Respondent did not establish any of the tests for setting aside a consent order.
10. There is in the view of this Court a valid Judgment, resulting from the consent of the Parties, and which Judgment the Respondent has indicated in the past, its willingness, if not readiness, to fully settle. The Intended Appeal diverts from the consent and undertaking to settle. It has not been shown that there is an arguable Appeal. It has not been shown that if the order of stay is declined, the Appeal would be rendered nugatory. If the Respondent was enduring financial constraints and not ready to settle the decree immediately, it should have sought an order for staggered payments, instead of seeking to stay execution of a consent Judgment entered years ago.

IT IS ORDERED: -

- a. ***The Application dated 14th June 2019 filed by the Respondent is declined.***

b. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 18TH DAY OF JUNE 2021.

JAMES RIKA

JUDGE