



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**PETITION NO. 4 OF 2020**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010**

**ARTICLES 230, 20, 22(3), 41(A)(B), 27, 28, 29, 47(2), 50 AND CONTRAVENTION OF  
THE RIGHT TO REASONABLE WORKING CONDITIONS, FAIR REMUNERATION,  
EQUALITY, FREEDOM FROM DISCRIMINATION AND FAIR ADMINISTRATIVE  
ACTION, FREEDOM FROM TORTURE, DEGRADING TREATMENT AND FAIR TRIAL**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT, 2007 LAWS OF KENYA**

**SECTIONS 5, 26, 45, 47 AND OTHER ENABLING PROVISIONS**

**AND**

**IN THE MATTER OF SALARIES AND REMUNERATIONS**

**ACT NO. 10 OF 2011, SECTIONS 11, 12 AND 13**

**AND**

**IN THE MATTER OF SALARIES AND REMUNERATION**

**COMMISSION ACT (REMUNERATION AND BENEFITS**

**OF STATE AND PUBLIC OFFICERS) REGULATIONS, 2013**

**BETWEEN**

**CLIFORD OTIENO OBIERO.....PETITIONER**

**v**

**LAKE BASIN DEVELOPMENT AUTHORITY.....RESPONDENT**

**RULING NO. 2**

1. In a judgment delivered on 1 February 2021, the Court found that the Respondent had constructively dismissed the Petitioner and awarded

him compensation of Kshs 200,000/-.

2. The Petitioner and the Respondent were both aggrieved, and on the same day, they requested certified copies of the proceedings to enable them to appeal.

3. The Respondent filed a Notice of Appeal on a date that is not clear. The Deputy Registrar signed the Notice on 18 February 2021.

4. On 8 April 2021, the Respondent filed a Motion seeking stay of execution pending the intended appeal.

5. The Court heard the Motion and, in a Ruling delivered on 15 April 2021, granted interim stay of execution on condition that the Respondent deposited into Court the decretal sum of Kshs 200,000/- on or before 27 April 2021.

6. The Respondent did not comply with the condition in time, and the Petitioner moved to execute on or around 30 April 2021.

7. The Deputy Registrar allowed the application, and the auctioneer's proclaimed the Respondent's properties on 6 May 2021.

8. The Respondent then moved the Court on 13 May 2021, seeking enlargement of time in which to deposit the decretal amount in Court as well as an order staying the attachment.

9. The Petitioner filed a replying affidavit in opposition to the Motion on 20 May 2021, and pursuant to further Court directions, the Respondent filed its submissions on 21 May 2021 while the Petitioner filed his submissions on 24 May 2021.

10. The primary reason given for the failure to comply with the condition upon which the interim stay was granted allegedly because the Court had not emailed to the Respondent the directions given on 15 April 2021.

11. The Respondent further asserted that its advocate became aware of the Directions only upon its Clerk followed up with the Court on 27 April 2021.

12. According to the Respondent, the failure to deposit the decretal sum was inadvertent.

13. On 13 May 2021, the Court extended the time for the deposit of the decretal amount to 14 May 2021. The sum was deposited in Court on 15 May 2021.

14. Considering that as a matter of fact, the decretal sum has now been deposited in Court and that the initial Motion filed on 8 April 2021 seeking a stay of execution pending intended appeal has not been heard on the merits, the Court directs:

(i) The time to deposit the decretal sum is deemed as extended to 15 May 2021.

(ii) The warrants of attachment given on 30 April 2021 and the proclamation on 6 May 2021 are set aside on condition the Respondent pays the auctioneer's legitimate costs.

(iii) The Petitioner files his submissions on the Motion of 8 April 2021 on or before 30 July 2021.

(iv) The Petitioner to have costs of the Motion filed on 13 May 2021.

15. The Court will deliver its Ruling on the Motion filed on 8 April 2021 on 17 November 2021.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1<sup>ST</sup> DAY OF JULY 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

Petitioner in person

For Respondent Mr. Yogo instructed by Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura