



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 281 OF 2016

KENYA SCIENTIFIC, RESEARCH

INTERNATIONAL, TECHNICAL AND

INSTITUTIONS WORKERS' UNION.....CLAIMANT

v

KENYA AGRICULTURAL AND LIVESTOCK

RESEARCH ORGANISATION (SUGAR

RESEARCH INSTITUTE).....RESPONDENT

RULING

1. The Kenya Research Agricultural & Livestock Research Organisation (Sugar Research Institute) (the Respondent) declared redundancies in 2014, and among those affected included 50 employees who were members of the Kenya Scientific Research International Technical & Institutions Workers Union (the Union).
2. The Union sued the Respondent on behalf of the employees, and in a judgment delivered on 26 April 2019, the Court found in favour of the employees.
3. In the said judgment, the Court directed the Labour Officer to compute the terminal benefits due to the employees with the participation of the Union and the Respondent.
4. The Respondent was aggrieved, and on 12 June 2019, it filed a Motion seeking stay of execution of the judgment and admission of a Notice of Appeal out of time.
5. The Court heard the Motion, and on 11 July 2019, declined to grant an order of stay of execution but directed the Respondent to cooperate with the Labour Officer in computing the terminal benefits due to the employees.
6. The Labour Officer filed the computations as ordered by the Court on 21 August 2020 and a corrected schedule on 27 August 2020 (the Labour Officer had indicated that the Respondent had refused to cooperate with his office in computing the benefits).
7. When the Cause was placed before the Court on 9 December 2020 (the Respondent was represented while the Union was absent), the Court adopted the computations by the Labour Officer.
8. The adoption of the computations by the Court prompted the Respondent to move the Court on 19 February 2021 seeking orders:
 - (i) ...
 - (ii) ...
 - (iii) THAT there be stay of further proceedings in this matter and/or execution of the judgment and decree of this Court dated 26 April 2019 and delivered on the 20 May 2019 and all consequential orders and/or proceedings emanating therefrom pending the hearing and determination of the preferred appeal, being Kisumu Civil Appeal No. 299 of 2019.
 - (iv) THAT the costs of this application be in the cause.

9. The General Secretary of the Union filed an affidavit in opposition to the Motion on 4 March 2021, and pursuant to further Court orders, the Respondent filed its submissions on 30 April 2021 while the Union had filed its submissions on 28 April 2021.
10. The main grounds advanced by the Respondent in support of the Motion were that the Union was not a person of means and therefore, if the execution were to proceed, it stood to suffer irreparable loss, and the appeal would be rendered moot.
11. The Respondent also contended that if execution proceeded, its operations would be grounded.
12. The Respondent indicated that it was ready and willing to abide by any conditions given by the Court.
13. In opposition to the application, the Union asserted that the Respondent had failed to cooperate with the Labour Officer in the process of computing the terminal benefits and that the Respondent only moved the Court after the Labour Officer sought the guidance of the Court.
14. The Union also contended that the Motion amounted to an abuse of the court process as there was an earlier application for stay of execution which was pending before the Court.
15. The Court has considered the presentations by the parties.
16. The principles upon which a stay of execution pending determination of an appeal is granted is well known, and the principles are a derivative of Order 42 Rule 6 of the Civil Procedure Rules.
17. They are that the applicant should demonstrate that it stands to suffer a substantial loss, the Court has been moved without unreasonable delay and the provision of security for the due performance of the decree.
18. The Respondent has preferred an appeal. The Union did not respond to depositions on its financial position or the ability to refund the decretal sum if the same were paid out and the appeal was to succeed.
19. The Respondent indicated a willingness to abide by any conditions imposed by the Court. The condition envisaged is security for the due performance of the decree.
20. Having considered the arguments by the parties, the Court is minded to allow the Motion in terms of proposed order (iii) hereinabove on condition that the Respondent deposits Kshs 11,087,358/- being half of the decretal sum of Kshs 22,174,717/80 in Court within 30 days from today.
21. In default, the Union is at liberty to execute the decree.
22. Costs in the cause.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF JULY 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Union Mr Mulaha

For Respondent Mr Saenye instructed by Millimo, Muthomi & Co. Advocates

Court Assistant Chrispo Aura