



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.1266 OF 2015

FREDRICK OBIERO OWINO.....CLAIMANT

VERSUS

BRIDGE INTERNATIONAL ACADEMIES LIMITED.....RESPONDENT

RULING

The respondent, Bridge International Academies Limited filed application dated 27th February, 2020 seeking stay of execution of the judgement deliver on 30th January, 2020 in favour of the claimant pending hearing of the intended appeal.

The application is supported by the affidavit of Anthony Mugodo, head of legal department of the respondent and on the grounds that upon judgement herein on 30th January, 2020 the respondent was aggrieved and filed Notice of Appeal without delay and which appeal has high chances of success and unless this application is allowed and the judgement stayed there shall be loss and damage and the appeal rendered nugatory.

Mugondo also avers in his affidavit that the judgement amount is Ksh.7444,333 and if paid to the claimant he has no chance that he will be able to refund upon a successful appeal. The claimant has no known financial means and there shall be prejudice upon the respondent as the applicant unless stay of judgement is allowed.

In reply, the claimant filed his Replying Affidavit and on the grounds that judgement delivered on 30th January, 2020 was after a 5 years trial and he should be allowed to enjoy the same as awarded.

The claimant has filed his bill of costs at Ksh.357,206 which has not been taxed and where the court finds in favour of the respondent the entire decretal sum of Ksh.962,206 should be deposited in joint interest earning account to secure the judgement herein.

Both parties filed written submissions.

Determination

The respondent is seeking stay of execution of the judgement herein delivered on 30th January, 2020 on the grounds that there is an intended appeal against the judgement and a Notice of Appeal was filed without delay.

A Notice of Appeal serves only as an intention. Such intention must be actualised by tangible efforts to commence the process by preparing the record of appeal.

Save to urge the court that a Notice of Appeal was filed, there is nothing else the respondent has done since judgement was delivered a period of over sixteen (16) after the fact.

Even where there is an existing appeal, which is not the case here, The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

The claimant submitted that costs herein have not been taxed and the total decretal sum stands at ksh.962,206 which should be deposited in a joint interest earning account to preserve the substance of the judgement.

In the interests of justice and to secure the rights of both parties, the costs not taxed, the judgement amount at ksh.605,000 shall be deposited in a joint interest earning account held by both parties herein and within the next 45 days and failure to which the stay shall lapse.

Accordingly, application dated 27th February, 2020 is hereby allowed and stay of execution issued on condition that the judgement sum of Ksh.605,000 shall be deposited in a joint interest earning account held by both parties within 45 days failure to which, stay granted shall lapse.

DELIVERED IN COURT AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi