



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAIROBI

CAUSE NO.1970 OF 2014

SIMON TITUS YANDICLAIMANT

VERSUS

DIRECTLINE ASSURANCE COMPANY LIMITEDRESPONDENT

RULING

The respondent, Directline Assurance Company Limited filed application dated 13th November, 2020 seeking stay of taxation proceedings and that the court do enlarge time within which the respondent ought to comply with orders issued on 10th March 2020.

The application is supported by the affidavit of Pauline Waruhiu and on the grounds that on 27th May, 2019 judgement herein was delivered in favour of the claimant for the sum of Ksh.2,240,000 with costs and interests. Dissatisfied with the judgement, the respondent filed Notice of Appeal on 10th June, 2019 and applied for stay of execution which was allowed on 10th March, 2020 on condition that the entire decretal sum in an interest earning account be opened in the joint names of the parties.

Ms Waruhiu avers in her affidavit that before the respondent could extract the subject order the Chief Justice issued a directive on closure of courts with effect from 16th March, 2020 following the COVID19 pandemic and all proceedings in court were placed in abeyance.

When court operations were up scaled, a stalemate had arisen between the respondent and its then advocates and was not informed of the conditions of stay for compliance. Such was not wilful or through negligence and the respondent has since appointed new advocates to facilitate progress in the matter and thus seek for stay of taxation and extension of time to comply with the stay of execution conditions as otherwise the intended appeal shall be rendered nugatory.

The claimant filed his Replying Affidavit and avers that the instant application and one dated 3rd September, 2020 are in abuse of court process and should be dismissed. The consent signed by the previous advocate for the respondent has never been adopted as an order of the court. The current advocates have not been allowed on the record.

The claimant also avers that the respondent has been aware of the orders granted on 10th March, 2020 and there is no compliance. The instant application is an afterthought meant to defeat justice. Once court services were up scaled, the respondent has not done anything to comply as directed.

The respondent only contacted the claimant on 23rd October, 2020 after the bill of costs had been filed and served. The taxation process was on-going before such date and the respondent cannot use such to claim there was a stalemate and court services were not available to him.

Since the Notice of Appeal was filed, the respondent has not taken any further steps in this regard.

This is a 2014 matter and since judgement in 2019 the respondent has not done anything to expedite justice and to avoid paying the claimant following a finding there was unfair termination of employment in the year 2013. The application should be dismissed with costs.

Both parties filed written submissions.

On the application, affidavits and written submissions the single issue for determination is whether the court should enlarge time to allow the respondent to comply with orders issued on 10th March, 2020.

The subject orders of 10th March 2020 were that there was stay of execution of judgement herein on condition the respondent *deposits the*

entire decretal sum in a joint interest earning account held in joint names of counsels on record within 30 days. In default execution to issue.

The respondent's case is that following orders of 10th March, 2020 the Chief Justice issued direction and closure of courts due to COVID-19 pandemic on 16th March, 2020 and also there was a stalemate between counsel and client and therefore court not comply as directed.

In the Supporting Affidavit of Ms Waruhiu dated 13th November, 2020 at paragraph 9 to 12 that sometime in August, 2020 when court operations were being upscale there was a stalemate between the respondent and their advocates and *I am aware that the respondent did not comply with the conditional stay orders granted by the court within the timelines granted and the stay period lapsed paving the way for execution of the impugned judgement ... in the circumstances in August, 2020 the company resolved to appoint its current firm of advocates to take over conduct of this matter from the previous firm of advocates.*

It is clear to the court that as of August, 2020 the respondent were well aware that court operations had been upscale and knew of the conditional stay of execution. There was knowledge that the time period of 30 days had since lapsed.

The instant application was only filed in November, 2020.

Time from August to November, 2020 is not accounted for.

The respondent was at all material time aware of the veracity of the say orders granted and the conditions thereof and there was no compliance.

Court orders should not be issued in futility. The claimant has a valid judgement and had legitimate expectation that justice will be rendered to him

Without going into the merits or the reasons conditional stay of execution was granted on 10th March , 2020 at this instance, the orders sought for extension of time to comply with the subject conditions is found in abuse of court process. No reasonable excuse and reasons are given to justify time enlargement on the face of the given circumstances.

The conditional stay granted on 10th March, 2020 and its terms has since lapsed.

Accordingly, application dated 13th November, 2020 is hereby found without merit and is hereby dismissed with costs.

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

M. MBARU

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: OKODOI

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