



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1348 OF 2014

BETWEEN

OKWARO L.J. LIROI.....CLAIMANT

VERSUS

1. DICKSON MZUNGU

2. DHL EXCEL SUPPLY CHAIN [K] LIMITED

3. EDWARD SIMBAUNI

4. ELKANA MONG'ARE..... RESPONDENTS

RULING

1. Judgment was delivered in favour of the Claimant against the 1st Respondent, on 30th November 2018. The 1st Respondent was ordered to pay the Claimant notice at Kshs. 15,000 and compensation for unfair termination equivalent of 3 months' salary at Kshs. 45,000- total Kshs. 60,000. He was also ordered to meet Claimant's costs.

2. The 1st Respondent has not satisfied the decree. He has filed an Appeal at the Court of Appeal, and applied to the E&LRC on 5th November 2020, for stay of execution pending hearing of that Appeal. That Application is the subject matter of the today's Ruling.

3. There is on record an Agreement executed by the Parties after Judgment, dated 10th November 2020. The Agreement was executed a week after the filing of the Application for stay of execution. The 1st Respondent acknowledged Judgment-Debt of Kshs. 206,660, and Auctioneer's Fee of Kshs. 68,940. He undertook to pay the debt in monthly instalments beginning with a sum of Kshs. 100,000, payable on 11th November 2020. The 1st Respondent undertook to pay Auctioneer's Fee of Kshs. 50,000 on the same date. This agreement is exhibited in the Replying Affidavit filed by the Claimant, sworn on 30th November 2020.

4. In light of the Agreement dated 10th November 2020, the 1st Respondent has no justification in seeking the orders of stay of execution. There is a valid Judgment of the Court, made 3 years ago. The 1st Respondent made an Agreement on satisfaction of the Judgment.

5. He is pursuing an Appeal, the Agreement of 10th November 2020 notwithstanding. Decree was extracted and costs have been taxed. There is nothing left for this Court upon which to exercise its jurisdiction. There is an Agreement on the mode of satisfaction of the decree and there is an Appeal. The Court has not seen any Affidavit by the Respondent, disavowing the Agreement of 10th November 2020. He says nothing about the Agreement in his Submissions on the Application. The Claimant went before the Court of Appeal after a lengthy delay and was allowed to file his Appeal. Notice of Appeal is dated 10th August 2020. Judgment was delivered about 2 years before. The 1st Respondent states, Appeal was filed in October 2020. Why file an Appeal and, later in November 2020, execute Agreement on the mode of payment? The 1st Respondent should honour the Judgment delivered by this Court on 30th November 2018, and the Agreement dated 10th November 2020. His Appeal is not rendered nugatory by his honouring existing decretal and contractual obligations. The E&LRC in any event is no longer seized of the matter: it is *functus officio*.

IT IS ORDERED: -

a. The Application dated 5th November 2020 is declined.

b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 22ND DAY OF OCTOBER 2021.

JAMES RIKA

JUDGE