



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1511 OF 2016

FLORENCE KAVOSA WANYANGA..... CLAIMANT

VERSUS

KENYA NATIONAL EXAMINATION COUNCIL..... RESPONDENT

RULING

The respondent, Kenya National Examination Council filed application dated 1st March, 2021 seeking for orders of stay of execution of the judgement and decree thereof delivered on 26th January, 2021. The stay is required to allow the respondent file intended appeal. The respondent offered security for the due performance of the judgement by a bank guarantee from a reputable financial institution.

The application is supported by the Affidavit of Befley Bisem the corporation secretary and deputy director legal services and on the grounds that the respondent has filed a Notice of Appeal against the judgement herein and if stay is not granted the appeal shall be rendered nugatory. They have applied for typed proceedings for this purpose and is willing to provide a bank quanta for the decretal sum as security pending the hearing of the appeal.

The parties are agreed on stay of execution sae for the nature of security deposit.

Both parties made oral submissions on the single issue not agreed upon.

The respondent as the applicant it is a government agency whose funds are secured from the government and to protect the public interest to be allowed to give security of a bank guarantee which is an acceptable instrument and where the appeal is declined the claimant will have recourse from the good security.

The claimant opposed the application and filed her Replying Affidavit and avers that the judgement herein relates to payment of damages following unfair termination of employment and costs which have not been taxed and the application is premature and no decree has been issued. The matter has been pending before court since the year 2016, she has since retired and requires the utilisation of the award herein. She is capable of refunding any monies paid pending the intended appeal whose draft or grounds thereto have not been addressed.

The claimant seeks that stay of execution be allowed on condition that half (1/2) the judgement amount be paid and the balance be secured through a bank guarantee.

Determination

Conditions for stay of execution pending an intended appeal are outlined under Order 42 Rule 6 of the Civil Procedure Rules. It is trite that the Court in considering the application does not necessarily make orders that would deprive a successful party the fruits of her judgement. See **George Oraro v Kenya Television Network Nairobi High Court Civil Case No. 151 of 1992** and **F. K. Kiongo v VPN Mukubwa & another Nairobi Civil Application No. 63 of 1988**.

the claimant was retired from her employment with the respondent on 20th April, 2015 which the court has made a finding it was unfair and made an award of compensation.

The respondent in urging the instant application has not outlined whether the intended appeal is against the whole or part of the judgement. No draft memorandum is attached. Even though this court is not sitting on appeal, upon judgement herein, stay of execution though agreed, the conditions for security deposit are not.

Without any material to assess the nature and grounds of appeal, it is only fair that the claimant's interests be accommodate with a payment of half the judgement sum while the balance is secured by a bank quadrante. Such would protect the interest of the respondent in

proceeding with the intended appeal and the claimant would have the fruits of the judgement though in part.

Accordingly, stay of execution agreed upon, the respondent shall release half the judgement sum to the claimant and the other half shall be secured by a bank guarantee from a reputable financial institution pending the hearing of the intended appeal. The release and security shall be done within the next 45 days and failure to which, the condition for stay shall lapse.

Costs to the claimant.

DELIVERED IN COURT AT NAIROBI THIS 7TH DAY OF OCTOBER, 2021.

M. MBARU

JUDGE