

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

ELRC CAUSE NO. 470 OF 2018

HENRY ABUGA BOSIRE ONGWAE.....CLAIMANT

VERSUS

MING TRIBE INTERNATIONAL GROUP LIMITED.....RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion Application dated 10th June 2021 seeking the following orders in the main:

1) *Spent.*

2) That the Honourable Court release the balance of the decretal sum of Kshs. 601,208/- as at 3rd June 2021 and any interest accruing thereof deposited in Industrial Court Revenue A/C instead of Judiciary Nairobi Deposit A/C.

3) That the said sum of Kshs. 601,208/- and any interest accrued be transferred to the Claimant/Applicant's account, held at Equity Bank Mama Ngina Branch.

4) That the Honourable Court do issue such orders and give such directions to meet the ends of justice.

5) That the Honourable Court do issue orders as to costs of this Application.

2. The Application is premised on the grounds that the Honourable Court delivered judgment in favour of the Claimant on 19th July 2019 and the Respondent was granted 30 days stay of execution and that the Claimant then proceeded to extract the decree and served the same upon the Respondent for approval and the Respondent filed notice of appeal indicating its dissatisfaction with the Court's judgment. The Claimant asserts that the Respondent then moved to this court *vide* a Notice of Motion Application dated 25th September 2019 before Makau J. seeking stay of execution of the decree pending hearing and determination of their intended appeal. The Claimant asserts that the Court granted the Respondent stay of execution on condition that it deposits in court the decretal sum plus cost as security within 14 days and the matter be heard on 24th October 2019. He states that on the said hearing date, the Respondent's application was dismissed. The Applicant asserts that the Respondent filed another Motion Application dated 24th October 2019 before Wasilwa J. and the Court ordered for stay of execution of Judgement dated 19th July 2019 pending the hearing of the Appeal on condition that the court releases the sum of Kshs. 1 million to the Claimant. The Claimant asserts that when the Respondent again filed another Motion Application dated 13th November 2019, the same was dismissed with costs by Radido J. on 19th November 2019. It is the Applicant's assertion that despite the Respondent having lodged a Notice of Appeal, it has failed to institute an appeal which should have been lodged within 60 days from the date of lodging the Notice of Appeal. The Claimant posits that the delay, failure and neglect on the Respondent/judgment debtor amounts to abandoning the intended Appeal and in law the Respondent is deemed to have withdrawn the notice of appeal. The Claimant urges that the termination of his employment followed by the delay in filing the appeal has placed the Claimant in serious pecuniary distress for over 515 days and amounts to abuse of the court process. The Application is supported the grounds on the face of the motion anchored by an affidavit sworn by the Claimant/Applicant who reiterated the grounds of the Motion herein and annexes copies of the Court Order dated 26th September 2019, the proceedings of 25th September 2019 and several/various orders given by the Court. He avers that the delay in prosecuting the appeal has occasioned prejudice on him as he is unable to access the fruits of the judgment and that it will therefore be reasonable and in the interest of justice to allow this application with costs. No response to the Application was filed.

3. The application seeks the release of funds to the Claimant/Applicant. The funds had been deposited by the Respondent in compliance with the order of the Court. The essence of the deposit was to secure the decretal sum pending the intended appeal. It would seem that the Respondent never mounted an appeal despite the passage of time since November 2019. The stay given by the Court was conditional and having failed to lodge an appeal within 60 days as required by the Rules, the inevitable conclusion is that the intended appeal emanating from the Judgment herein was abandoned. As such, the motion for the release of funds to the Claimant has merit and ought to be granted. Application allowed with the result that there be a release of the balance of the decretal sum of Kshs. 601,208/- as at 3rd June 2021 and any interest accruing thereof deposited in the Court account to the Claimant.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2021

NZIOKI WA MAKAU

JUDGE