



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MALINDI
CAUSE NUMBER 8 OF 2019

[Previously Cause No. 127 of 2016, E&LRC Mombasa]

BETWEEN

MWACHUPA HARANGA NDURYA.....CLAIMANT

VERSUS

KRYSTALLINE SALT LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Oduor Siminyu & Company, Advocates for the Claimant

Arwa & Change Advocates LLP, Advocates for the Respondent

RULING

1. Initially, an *ex-parte* Judgment was delivered in favour of the Claimant, on 8th March 2018.
2. The Judgment was set aside on the Application of the Respondent, and leave granted to respond to the Claim.
3. Parties were heard afresh, and in full and second Judgment delivered in favour of the Claimant on 31st October 2019.
4. The Respondent filed an Application on 23rd January 2020 seeking the Court to order stay of execution of Judgment pending Appeal and to have Notice of Appeal filed on 15th November 2019, deemed to have been filed and served on time.
5. The Application is based on the Affidavit of Hasmita Patel, Respondent's Director, sworn on 6th December 2019.
6. Hasmita explains that the slight delay in filing Notice of Appeal, was occasioned by the Change of Advocates instructed by the Respondent. Hasmita states that the Respondent is eager to appeal.
7. The Claimant opposes the Application through his Replying Affidavit, sworn on 10th February 2020. He narrates the history of the dispute highlighting that the initial Judgment was set aside, to allow the Respondent to participate in the proceedings.
8. Notice of Appeal was filed late. There was inordinate delay – 3 months in filing the Application, after judgment was delivered. The Respondent has not demonstrated why execution of the Judgment, should be stayed.

The Court Finds:-

9. There is unexplained delay in filing of the Application. The Application was filed on 23rd January 2020. Judgment was delivered on 31st

October 2019.

10. It was the second Judgment made in favour of the Claimant.

11. Hasmita has not exhibited draft Grounds of Appeal, to enable the Court assess if there is an arguable Intended Appeal. It is not enough for Hasmita to say that the Respondent is eager to appeal. It must be shown recondite grounds justifying Appeal exist. The Respondent has not even applied for proceedings, an elementary step in any process of Appeal.

12. It similarly has not been established, that the Claimant is a man of straw, incapable of paying back the sum of Kshs. 291,109, in event the intended Appeal succeeds.

13. As there is no valid Notice of Appeal on record, and no Draft Memorandum of Appeal exhibited, the Application must be rejected.

IN SUM, IT IS ORDERED:-

a) The Respondent's Application dated 20th January 2020, is rejected.

b) Costs to the Claimant.

Dated and delivered at Mombasa this 26th day of March 2020.

James Rika

Judge