



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1854 OF 2014

(Formerly HCCC No. 546 of 2002)

(Before Hon. Lady Justice Hellen S. Wasilwa on 21st May, 2020)

MARTIN O. OLUOCH.....1ST CLAIMANT

RICHARD W. MURIITHI2ND CLAIMANT

DANIEL I. METHU3RD CLAIMANT

HENRY N. GICHURU.....4TH CLAIMANT

VERSUS

KENYATTA NATIONAL HOSPITAL BOARD1ST RESPONDENT

DR. MESHACK ONGUTI2ND RESPONDENT

RULING

1. The Application before me was filed by the Respondents herein vide a Notice of Motion application. The Respondents herein are seeking extension of time to file an appeal out of time.

2. The Claimants have on the other hand raised a Preliminary Objection against the said application on the following grounds:-

1. The Application is incurably defective, incompetent and hopelessly out of time and filed after undue and unreasonable delay and brought under inapplicable and wrong provisions of the law and should be struck out In-Limine and Ex-Debito-Justitia.

2. The jurisdiction of this Honourable Court has been invoked through the wrong provisions of the law since the cited provisions of Sections 3A and 7 of Cap 9 together with Rules 4 and 53(1) of the Court of Appeal Rules are not applicable in the High Court but only applicable to the Court of Appeal.

3. The Jurisdiction to Stay Execution of Judgement, decrees and orders can only be invoked under Orders 42 Rule 6 upon specifically laid down conditions as provided by the law.

4. The Jurisdiction to extend time in the High Court is only exercised under Order 50 Rule 6 of the Civil Procedure Rules and not under the cited provisions in the Notice of Motion dated 29/01/2020.

5. The Honourable Court therefore has no jurisdiction to grant the orders as sought in the Notice of Motion dated 29/01/2020 and the Application should be struck out and/or dismissed with costs.

6. The Judgement and Decree sought to be appealed against was substantially executed, satisfied and effected save for a small limb thereof and the same cannot be stayed after having been substantially satisfied.

7. The Respondents filed a Notice of Appeal dated 05/12/2016 against the Judgement and Decree dated 14/11/2016 and never pursued the Appeal process and the Notice of Appeal is still on record and the Respondent took no action thereon for over three (3) years.

8. The Application is grossly incompetent, frivolous, vexatious, scandalous and amounts to a gross abuse of the Court process and the same should be dismissed with costs.

3. The Claimants argues that the application is filed under wrong provisions of law being Court of Appeal Rules and not under Order 50 Rules (6) of the Civil Procedure Rules and therefore lacks jurisdiction to hear the application.

4. The Claimants also argue that the Respondents filed a Notice of Appeal on 5/12/2016 against the judgement and decree dated 14/11/2016. They aver that the appeal is still on record and that the Respondents have not taken any action to prosecute it three years down the line.

5. The Respondent admit filing an appeal in 2016 which they have not prosecuted. Granting them an order to file another appeal out of time would make the new appeal sub judice. I therefore decline to grant the said order as sought.

6. On stay, there being no appeal except one pending before the Court of Appeal and which the Respondents have not prosecuted, the Court that can comfortably grant the stay is the Court of Appeal after considering the merits or otherwise of the appeal before Court.

7. I therefore find that the Preliminary Objection as raised has merit. I proceed to strike out the application before me filed by the Respondents and order that execution proceeds.

8. Costs in the cause.

Dated and delivered in Chambers via zoom this 21st day of May, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties