



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**CAUSE NO. 538 OF 2018**

*(Before Hon. Lady Justice Maureen Onyango)*

**KIMEU KIETI AND 184 OTHERS.....CLAIMANT**

**VERSUS**

**KENYA MEAT COMMISSION.....RESPONDENT**

**RULING**

The Applicants filed a Notice of Motion on 7<sup>th</sup> March 2019 seeking the following orders:

1. Spent.
2. That the Court be pleased to grant a stay of execution of the Judgment of the Marete J. issued on 20<sup>th</sup> December 2018 pending filing and hearing of appeal against the entire decision.
3. That the costs of the application be provided for.

The Application is based on grounds that:

1. The hearing of the suit proceeded on 15<sup>th</sup> October 2018 during service week when the Judge gave directions on the filing of submissions and stated that Judgment was to be delivered on notice.
2. On 4<sup>th</sup> March 2019, the Applicants learned that Judgment was delivered on 20<sup>th</sup> December 2018 and are desirous of filing an appeal against the entire decision.

The application is supported by the affidavit of Billy Amendi, an Advocate of the High Court, sworn on 7<sup>th</sup> March 2019. He depones that the judgment notice was to be served before the set judgment date but he never received it.

On 16<sup>th</sup> May 2019, the parties' Counsel informed Court that the Respondent had filed a Replying Affidavit in response to the application. However, at the time of writing this Ruling there was no replying Affidavit on record. Further, the parties did not file submissions as directed by court on 16<sup>th</sup> May 2019.

**Determination**

The application herein was brought under Order 22 Rule 22 of the Civil Procedure Rules which provides:

**(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.**

**(2) Where the property or person of the judgment-debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the results of the application.**

**(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor the court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.**

The Applicants seek stay of execution pending filing of their appeal. The Applicants filed a Notice of Appeal on 7<sup>th</sup> March 2019. However, the application is brought under the wrong provisions of the law as Order 22 Rule 22 relates to stay where a decree has been sent for execution. Order 22 Rule 22 is therefore inapplicable as no decree has been extracted for execution.

The application should therefore have been filed under Order 42 Rule 6 of Civil Procedure Rules. Consequently, the applicants ought to have met the conditions set out under Order 42 Rule 6 (2) of the Rules that:

**(2) No order for stay of execution shall be made under subrule (1) unless—**

**(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

**(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.**

The Applicants have not demonstrated any of the requirements set out under Order 42 Rule 6(2) of the Civil Procedure Rules. They have been occupying the premises owned by the respondent since December 1993 to date without paying rent. In the judgment the court awarded the respondent the sum of Kshs.81,730,500.00 and further rent up to date of vacation of the premises. They have not sated anything about the same.

Justice is like a double edged sword. It cuts both ways. A person seeking justice must also be prepared to do justice. The applicants cannot expect to occupy the respondent's premises for more than 26 years without paying rent on the grounds that they are waiting for payment of terminal dues which they did not plead in their claim.

I find no merit in the application and dismiss the same. In view of the fact that the respondent did not defend the application, there shall be no orders for costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF MAY 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**