



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU**

**PETITION NO.17 OF 2018**

**HALIMA GABABA ABDULAHI .....PETITIONER**

**VERSUS**

**HE LEE KINYANJUI .....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF NAKURU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The petitioner filed application dated 17<sup>th</sup> December, 2019 seeking for orders that there be stay of execution of the judgement and decree of 29<sup>th</sup> April, 2019 and consequential orders thereof including the taxation of party and party costs.

The application is supported by the affidavit of the petitioner and on the grounds that following the judgement on 29<sup>th</sup> April, 2019 dismissing the petition with costs she was dissatisfied and intends to file an appeal to challenge the judgement.

The respondent has moved to have the party and party bill of costs taxed at Ksh.483,155 and if the decree and costs is executed the intended appeal shall be rendered nugatory.

The respondent filed Replying Affidavit sworn by Benjamin Njoroge and on the grounds that he is the county secretary and head of county public service board of the 2<sup>nd</sup> respondent and well versed with the matter and opposes the petitioner's application on the grounds that it is devoid of any merit and should be dismissed with costs.

Mr Njoroge also avers that the application seeking for stay of execution has been brought with undue delay as judgement was rendered on 29<sup>th</sup> April, 2019 and the delay of 8 months has not been explained. The respondent filed its bill of costs on 11<sup>th</sup> June, 2019 and upon service upon the petitioner she has filed the instant application to stall the taxation process. There is no loss which shall be suffered if taxation and execution of the judgement is declined and the petitioner has not established sufficient cause for stay of execution.

Both parties addressed the application by way of written submissions.

The petitioner submitted that pursuant to the judgement of the court and award of costs, the respondent proceeded to file the party and party bill of costs which was taxed by the Deputy Registrar on 11<sup>th</sup> December, 2019 at Ksh.481,155. If the decree resulting from the judgement and costs is executed the appellant appeal will be rendered nugatory and shall suffer irreparable loss and damage. The applicant has lost her job and unable to pay costs.

The petitioner also submitted that upon the taxation of costs she moved the court for stay of execution and there is no delay and shall abide any orders issued by the court in securing the decree.

The respondent submitted that the application seeking stay of execution has been filed with inordinate delay, the petitioner has not satisfied the provisions of Order 42 Rule 6 of the Civil Procedure Rules and has not established what substantial loss shall be suffered if stay of execution is not allowed and has not offered any security for costs.

Rule 32 of the Employment and Labour Relations Court (Procedure) Rules, 2016 allow execution in employment and labour relations claims by application of the Civil Procedure Act and the Rules thereto. In this regard where stay of execution is applied for, an applicant must satisfy the provisions of Order 42 Rule 6 of the Civil Procedure Rules and which requires that for a court to grant stay of execution pending appeal it has to be satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay. See **Esther Wanjiru versus Jackline Arege [2014] eKLR** where the court held that an order of stay of execution will be granted where the court is satisfied that substantial loss may result to the applicant.

And also applicant is guided by the case of **Mukuma versus Abuoga** where it termed substantial loss as being the cornerstone of the discretion by the court in the granting stay of execution under Order 42 and held that;

**...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory. ...**

An applicant is obligated to furnish such security as the court may order for the due performance of such decree or order as may ultimately be binding on him.

Has the petitioner as the applicant satisfied the above principles for the grant of stay of execution by this court?

The petitioner is seeking for stay of execution of the judgement of the court delivered on 29<sup>th</sup> April, 2019 and submitted that on 11<sup>th</sup> December, 2019 the respondent filed and had the party and party bill of costs taxed and now fear there shall be execution following the taxation of costs at ksh.483,155 yet she has no employment to pay for the costs.

In essence, after the judgement delivered on 29<sup>th</sup> April, 2019 the petitioner did not move with haste to preserve the delivered judgement until the party and party bill of costs was filed, served and taxed. There is no appeal filed and even where there is intention to file any appeal, such is not actually with a Notice of Appeal, a draft memoranda or any grounds upon which the same is premised. Despite this court having rendered itself with regard to matters herein, the obvious delay in securing the judgement for the petitioner to move to the Court of Appeal so as to enjoy stay of execution herein is left bare.

The delay from April, 2019 to 17<sup>th</sup> December, 2019 when the \_\_\_14 instant application was filed is not explained. Such delay does not aid the petitioner's case seeking for stay of execution.

Equally, save for stating that the petitioner lost her employment and thus shall suffer loss and damage if there is no stay of execution and payment of costs is not given any foundation. This tied with the apparent delay in filing the instant application, there begin no appeal filed, to order for stay of execution would be to stall the course of justice for no good cause. See **Kenya Commercial Bank Ltd versus Sun City Properties Ltd & 5 Others [2012] eKLR** where it was held:

*In an application for stay, there are always two competing interest that must be considered. These are that a successful litigant should not be denied the fruits of his judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always be balanced.*

The respondent has since moved and filed the Party and Party Bill of Costs which has been taxed and the due costs assessed. The petitioner sat back on her right of appeal until the Party and Party Bill of Costs was taxed and costs assessed. She is required to pay ksh.483,155.

Without any good cause being established by the petitioner as to why the respondent should be denied the due costs, the application seeking stay of execution is without merit and must suffer the obvious. Dismissal with costs.

**Accordingly, application dated 17<sup>th</sup> December, 2019 seeking stay of execution of the judgement delivered on 29<sup>th</sup> April, 2019 is hereby found without merit and is dismissed with costs to the respondent.**

Dated and delivered electronically this 11<sup>th</sup> May, 2020 at 0900 hours

**M. MBARU**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court 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 the Order herein shall be delivered to the parties via emails this 11<sup>th</sup> May, 2020 at 0900 hours

**M. MBARU**

**JUDGE**