



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CIVIL APPEAL NO. 62 OF 2019

JANTA KENYA LIMITED.....APPELLANT

v

MILLICENT ACHIENG OTIENO.....RESPONDENT

(Being an appeal from the judgment of the Honourable A.N. Makau (Ms) delivered on 4th October 2019 in Milimani CMCC No. 93 of 2018)

RULING

1. The Magistrates' Court delivered judgment in favour of Millicent Achieng Otiemo (Respondent) on 4 October 2019 in which the heads of claim for salary in lieu of notice, pro-rata leave and compensation for unfair termination of employment were allowed.
2. Janta Kenya Ltd (Appellant) was aggrieved and on 29 November 2019 it filed a motion under a certificate of urgency seeking orders
 1. (spent)
 2. This Honourable Court grant a stay of execution of the judgment and subsequent decree of the Honourable A.N. Makau delivered on 4th October 2019 pending the hearing and determination of this application.
 3. This Honourable Court grant a stay of execution of the judgment and subsequent decree of the Honourable A.N. Makau delivered on 4th October 2019 pending the hearing and determination of this Appeal.
 4. This Honourable Court be pleased to grant the Appellant leave to lodge an appeal out of time against the decision delivered on 4th October 2019 by the Chief Magistrates Employment and Labour Court CMEL No.93 of 2019.
 5. Upon grant of leave to appeal out of time, the Memorandum and record of Appeal herein be deemed as duly filed.
 6. The costs of this application be in the cause.
3. The Duty Court certified the application as urgent on 2 December 2019 and directed that it be served for *inter partes* hearing on 10 December 2019.
4. During the appearances on 10 December 2019, the Court granted an interim stay of execution on condition that the Appellant deposited the decretal sum into Court. The sum of Kshs 143,716/- was deposited into Court on 30 January 2020.
5. The Respondent, through her advocate on record, filed a replying affidavit in opposition to the application on 16 December 2019 and this prompted the Appellant's advocate to file a further affidavit on 20 January 2020.
6. The motion was argued on 13 February 2020 and pending the delivery of this Ruling, the Court granted leave to appeal out of time to the Appellant.
7. The Court has considered the application, the affidavits and oral submissions.
8. The conditions upon which stay of execution pending appeal is granted need no rehashing. The conditions are derivative(s) from Order 42 Rule 6 of the Civil Procedure Rules. They are tender of security, demonstration of substantial loss if a stay is not granted, and moving the Court without inordinate delay.

9. The Court already directed the Appellant to deposit security with the Court and the same condition was complied with albeit late (an explanation was tendered).

10. Apart from the security deposit, it was incumbent upon the Appellant to demonstrate the substantial loss which would be occasioned to it were stay of execution not be granted. There was no attempt whatsoever to prove this condition in the affidavit.

11. On the question of unreasonable delay, the Appellant filed the application within weeks of the judgment and nothing turns on the condition.

12. Since the Appellant was granted leave to appeal out of time and the Record of Appeal is ready, and despite not meeting the threshold for a stay of execution pending appeal, the Court directs/orders as follows pursuant to Order 42 Rule 13

(a) Appellant to file/serve submissions on or before 3 July 2020.

(b) Respondent to file submissions on or before 3 August 2020.

(c) Mention on 3 August 2020 to confirm compliance/further directions.

(d) Pending judgment, interim orders extended.

13. Costs to abide the outcome of Appeal.

Delivered through Microsoft teams/email, dated and signed in Nairobi on this 5th day of June 2020.

Radido Stephen

Judge

Appearances

For Appellant Mr. Wanjeri instructed by Wangui Wanjuhi Advocates

For Respondent Ms. Ochogo instructed by Gakoi Maina & Co. Advocates

Court Assistant Judy Maina