



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1033 OF 2014

GEOFFREY GITAU WAINOGA.....CLAIMANT

- VERSUS -

GOAL SOUTH SUDAN.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 23rd October, 2020)

RULING

The claimant has filed on 03.08.2020 the notice of motion dated 27.07.2020 through Kinoti & Kibe Advocates. The application is under rule 17, 29(3) of the Employment and Labour Relations Court Rules, 2016, Order 51 rule 1 and 3 of the Civil Procedure Rules, 2010 and section 3A of the Civil Procedure Act. The applicant prays for orders:

- 1) That the Honourable Court be pleased to order the release of half the decretal sum being Kshs. 4,442,986.00 held in Account No.2xxxxxxx1 of ABSA Bank Kenya PLC in the joint names of the firm of Kinoti & Kibe Co. Advocates and Anjarwalla & Khanna LLP.
- 2) That the Honourable Court be pleased to order the respondent otr judgment debtor to deposit Kshs. 16, 794, 487.07 being interest payable from the date of institution of the suit February 2007 to 31.07.2020.
- 3) That costs of the application be provided for.

The application was based on the annexed claimant's affidavit and upon the following grounds:

- 1) In the judgment delivered in the suit the Court ordered the respondent to pay the applicant a sum of Kshs. 8, 885, 972.00 by 01.09.2019 failing interest to be payable thereon from the date of filing the suit till full payment.
- 2) By application dated 31.07.2019 the respondent filed an application for stay of execution pending a proposed appeal. The application was compromised by the parties on 06.11.2019 by order that the respondent was granted a stay of execution pending appeal subject to deposit of the full decretal amount into a joint interest earning account of the parties' advocates. The respondent deposited the amount of Kshs. 8, 885, 972.00 as ordered on 02.03.2020.
- 3) The interest payable for failure to pay decretal sum as ordered is now computed at Kshs.16, 794, 487.07.
- 4) As the decretal sum constituted payment of salaries and remuneration that was due to the applicant between 2002 to 2005, it is just and fair for the applicant to be able to enjoy part of the fruits of the judgment given the longevity of the hearing and determination of the suit prior to the appeal.
- 5) The applicant is more than capable of repaying the sum prayed for release to him herein should the Court of appeal overturn the judgment,
- 6) It is just and fair for the application to be allowed.

The respondent has opposed the application by urging as follows:

- 1) The judgment was delivered on 21.06.2019. On 06.11.2019 parties compromised the application for stay of execution pending appeal and in terms as stated for the applicant. The interim stay of execution had been given on 08.08.2019 being prior to 09.09.2019 when interest was to start running if no payment had been made.

2) After the order of stay of execution of 06.11.2019 the respondent's advocates requested the applicant's advocates on 07.11.2019 and on 13.11.2019 to provide information required to open the joint account but the request was unsuccessful. The respondent's advocates filed the notice of motion dated 13.12.2019 requesting the Court to waive the requirement to deposit the decretal sum in a joint account and instead to deposit the same in Court as a precondition for order of stay of execution pending the appeal. On 13.12.2019 the Court granted the order but on 16.12.2019 the applicant's advocates provided the documents to deposit the decretal sum in the bank and which was deposited in the bank on 04.03.2020. The respondent then abandoned the application of 13.12.2019.

The Court has considered the parties' respective cases and makes the findings as follows:

1) It is clear that the respondent obtained interim stay of execution orders on 08.08.2019 prior to 01.09.2021 when interest on the decretal sum would have started running. The Court finds that the interim stay of execution orders had the effect of staying the running of the interest and as submitted for the respondent the requirement to pay the decretal sum by 01.09.2019 was thereby temporarily stayed. The parties then compromised and confirmed the stay of execution order on 16.11.2019. The applicant's claim for deposit of interest on the decretal sum as prayed for will therefore collapse.

2) On the material before Court it is clear that the application for stay of execution was compromised by the order of 16.11.2019. There were delays in depositing the decretal sums and on 06.05.2020 the parties recorded a consent order that the deposit of the decretal sum had been effected. By that order the Court finds that the order of 16.11.2020 has been fully satisfied and the order of stay of execution pending appeal is currently in place. Now the applicant is praying for release of half of the decretal sum to him on account that the decretal sum relates to his salaries and allowances dating back to 2002 to 2005. The Court finds that such are matters that ought to have been raised in the application for stay of execution pending appeal but which was not done. The application for stay of execution having been determined by the order of 16.11.2020 and there being no application for review in that regard, parties are bound by the consent order of 16.11.2020.

In conclusion the application filed for the claimant dated 27.07.2020 is hereby dismissed with costs.

Signed, dated and delivered by the court at **Nairobi** by video-link this **Friday 23rd October, 2020.**

BYRAM ONGAYA

JUDGE