



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1106 OF 2017

EUSTACE MUCHIGIRI NJUGUNA..... CLAIMANT

VERSUS

CONSOLIDATED BANK OF KENYA LIMITED..... RESPONDENT

RULING

The respondent, Consolidated Bank of Kenya Limited filed application dated 20th November, 2020 seeking for orders that;

There be a stay of execution of the judgement delivered on 21st May, 2020 pending the hearing and determination of Nairobi Civil Appeal No.274 of 2010 [2020] – Consolidated Bank of Kenya Limited versus Eustace Muchigiri Njuguna.

The application is supported by the annexed affidavit of Rose Mukoba and on the grounds that on 21st May, 2020 the court delivered judgement in favour of the claimant and warded him 6 months salary amounting to ksh.779, 022; one month notice pay at ksh.129, 837 and costs of the suit. aggrieved, the respondent filed Notice of Appeal dated 2nd September, 2020 and on 15^h July, 2020 the respondent filed appeal vide Nairobi Civil Appeal No.274 of 2010 [2020] – Consolidated Bank of Kenya Limited versus Eustace Muchigiri Njuguna.

On 20th November, 2020 the bill of costs was taxed at ksh.223, 810.

The respondent is willing to deposit security for the due performance of the judgment on conditions this court may deem fit. The claimant stands to suffer no loss in the event this application is allowed.

The respondent has an arguable appeal with high chances of success as the court erred in finding that termination of employment was unfair contrary to the evidence submitted by the respondent.

In the supporting Affidavit, Rose Mukoba the human resource manager averred that the respondent has since filed Appeal, Nairobi Civil Appeal No.274 of 2020 and for the due performance of the judgement is willing to give security on terms and conditions allowed by the court. The respondent is a financial institution and can make good the judgement in the event the appeal is not a success.

The claimant in reply filed his Replying Affidavit and avers that the application by the respondent is meant to delay the enjoyment of the fruits of his judgement and there is no demonstration of what substantial loss shall be suffered if the orders of stay are not allowed.

The claimant also avers that since the respondent is willing to deposit security, such should be in a joint interest earning account held in the joint names of the advocates and to include;

Ksh.908, 857 the decretal sums;

Ksh.223, 810 the costs;

Ksh.95, 430 being interests.

Both parties attended and made oral submissions.

Determination

The main issue in dispute is the question of the nature and conditions with regard to security deposit for the due performance of the judgement following the appeal.

It is common cause that the respondent herein has since filed Nairobi Civil Appeal No.274 of 2020 following judgement herein delivered on 21st May, 2020. The right of appeal is secured in law and under the provisions of section 17 of the Employment and Labour Relations Court Act, 2011. It is only fair and just that the appeal in motion be allowed to proceed for hearing and determination.

On the other hand the claimant has a valid judgement of the court and legitimately should execute.

To balance the interests of both parties, it is only fair and just that the decretal sum of ksh.908, 857 and costs awarded at ksh.223, 810 be secured and hence deposited in a joint interest earning account held by both parties. The fact that the respondent is a financial institution has no bearing in these proceedings as each party has equal rights before the seat of justice.

The claimant shall therefore identify the banking institution of choice for the security deposit and for the due performance of the judgement of the court pending hearing and determination of the matter before the Court of Appeal, Civil Appeal No.274 of 2020.

Accordingly, application dated 20th November, 2020 is hereby allowed and stay of execution is hereby allowed on condition that the decretal sum of Ksh.908, 857 and costs at Ksh.223, 810 shall be deposited in a joint interests earning account held by both the advocates of both parties herein within thirty (30) days and the claimant shall identify the banking institution to hold such deposit. Costs shall follow cause.

DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2020.

M. MBARU

JUDGE