



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CASE NO. 373 OF 2017

(Before Hon. Justice Mathews N. Nduma)

MOSES OLOO MISEH.....CLAIMANT

VERSUS

MIGORI COUNTY ASSEMBLY SERVICE BOARD.....RESPONDENT

RULING

1. Application dated 30th July 2018 seeks stay of execution of judgment and decree dated 22nd February 2018. Judgment was delivered following an ex parte hearing upon failure by the respondent/applicant to enter appearance nor file a defence despite service of summons to enter appearance and statement of claim.
2. An application to set aside the judgment was heard and dismissed by the court on 19th July 2018.
3. The application is based on the grounds set out on the face of the application to wit, that a notice of appeal has been filed; That the proceedings yet to be set aside were undertaken ex parte; That the respondent has a right to fair hearing and would suffer irreparable and substantial loss and damage if stay is not granted and that no prejudice would be suffered by the claimant if stay is granted. The respondent insists that court process was never served on the respondent/applicant.
4. That the application has been done without undue delay. That respondent is ready and willing to abide by any terms and conditions placed on it by the court.

Opposition

5. The application is opposed vide grounds of opposition filed on 18th September 2018. That the applicant has not met requirements for stay set out in *Order 42 Rule 6 of the Civil Procedure Rules*.
6. That the decretal sum is a paltry 2,155,479 against the respondent which has an annual budget amounting into hundreds of millions of shillings. That the application is purely actuated by malice and bears signature of Tom Onyango whose signature appears different from the known signatures of Tom Onyango on the letters dated 2nd March 2018 and 25th August 2016 attached to the application. The claimant suspects forgery of the deponent's signature.

Determination

7. The appeal is against the ruling by myself declining to set aside the judgment of the court. The ruling was delivered on 19th July 2018 whereas the judgment was delivered on 22nd February 2018. No appeal has been noted against the judgment of the court wherein the court awarded the claimant Kshs 2,155,479.
8. There being no noted judgment against the judgment and the decree, there cannot be any basis in law and fact to grant stay of execution of the judgment that has not been appealed against.
9. This application against the ruling of the court comes more than five (5) months from the date of the judgment and after the Respondent has exercised its right to have the judgment set aside but failed.
10. Furthermore, the sum of Kshs. 2,155,479 is paltry as against the huge budget of the respondent and the court is not satisfied that the

respondent would suffer irreparable loss and damage if stay is not granted.

11. More importantly as said earlier, there is no appeal filed against the judgment and decree dated 22nd February 2018.

12. Accordingly, the application for stay of the judgment and decree of the court delivered on 22nd February 2018 has no merit and is dismissed.

Ruling Dated, Signed and delivered this 7th day of March, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Kennedy Okongo for Respondent/Applicant.

Mr. Nyamwea for claimant/Respondent

Chrispo – Court Clerk