



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CASE NO. 187 OF 2016

RACHEAL WANJIKU KIRURI.....CLAIMANT/APPLICANT

VERSUS

MICHAEL MURAYA KIRARA & ANOTHER.....RESPONDENTS

AND

CASE NO. 185 OF 2016

NANCY WAMBUI MUTURI.....CLAIMANT/APPLICANT

VERSUS

MICHAEL MURAYA

KIRARA & ANOTHER t/a METUMI BAR.....RESPONDENTS

RULING

1. The Claimants/Applicants (hereinafter referred to simply as Applicants) seek through the notices of motion dated 6th March 2019 for a vacation of the stay granted to the Respondents. The stay was a conditional stay on the Respondents. They were to enjoy the stay pending intended appeal and it argued that to date there is no appeal filed 1½ years later. The Applicants thus urge the stay be dislodged and they be permitted to execute the judgment that had been stayed.

2. The Respondents are opposed and have filed grounds in opposition as well as an affidavit sworn by their Advocate. The grounds and the affidavit are to the effect that there is an intent to appeal and that there has been a delay in obtaining the typed proceedings. He has attached letters seeking typed proceedings and averred that given the grounds in the memorandum of appeal there was an intent to mount the appeal.

3. The motion was urged by Mr. Kirubi for the Applicants and Mr. Muli who held brief for Mr. Kimwere for the Respondents. The Applicants counsel submitted that there was indolence and laches on part of the Respondents as the consent that had been recorded was to allow a conditional stay pending the intended appeal. After various mentions to confirm the filing of appeal, directions were given that the Applicants were at liberty to seek vacation of the orders of stay as no appeal had been preferred. He submitted that other than the letter seeking typed proceedings there had been no follow up and he said that the other letters attached to the affidavit of Mr. Kimwere were meant to mislead the court that there was an effort to

follow up as these letters were neither stamped in acknowledgment or bear a complaint on the delayed proceedings. He thus urged the court to allow the applications by the Applicants.

4. Mr. Muli on his part submitted that there had been follow up and that on several occasions there was follow up but the file could not be traced hence the absence of court stamps on the letters. He argued that the Respondents still intended to appeal as is evident by the filing of the notice of appeal and on the grounds in the draft memorandum of appeal. He urged the court to disallow the application.

5. The notice of appeal was filed on 19th May 2017. That is well over 1 year 9 months ago. The appeal proper is yet to be filed. In the record before the court there is no record indicative of the alleged seriousness to prosecute the appeal. The Applicants are right that there is laches and indolence on the part of the Respondents. Other than the letter which was written in May 2017 bespeaking typed proceedings, there is no other communication to court regarding the same. The letters attached to the replying affidavit therefore seem to be tailor made for the purpose of the motions before the court. If indeed the file had gone missing as is alleged, how come the Respondents have been able to file myriad applications relating to the execution and stay sought against the decision? It is apparent that the Respondents do not seem keen to proceed with the intended appeal. As there is inordinate delay in mounting an appeal, the order that commends itself for me to make is one allowing the Applicants' Notice of Motion applications dated 6th March 2019 with costs to the applicants. Execution may commence so that the judgment of the court is satisfied.

It is so ordered.

Dated and delivered at Nyeri this 8th day of April 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar