



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT

NAIROBI

CIVIL CASE NO 1583 OF 2013

KOKI MUIA.....CLAIMANT

VERSUS

SAMSUNG ELECTRONICS E.A. LIMITED.....RESPONDENT

RULING

1. The Application before this court for determination is the Claimant's Notice of Motion dated 17.12.2018 seeking the following orders:

- a) **THAT** this Honourable Court do grant the Claimant leave to prefer an appeal from the part of the Orders given by Hon. Justice Onesmus Makau on 8.10.2018 and issued on 1.11.2018, requiring the Applicant to pay interest on the principal sum due for refund to the Respondent.
- b) **THAT** pending the determination of this Application there be an order for stay of execution of the order requiring the Claimant to pay interest on the refund amount due to the Respondent.
- c) **THAT** cost of this Application be granted.

2. The facts of the case are that on 29.9.2017 the Court of Appeal in Nairobi Civil Appeal No. 57 of 2016, substituted the award of KShs. 8,782,166.60 given to her by this Court, with an award of KShs. 2,225,066.60 plus interest from the date of this court's judgment. As at that time, the Respondent had paid to the claimant a total of KShs. 4,705,843,75 as a condition for stay of execution pending the hearing and determination of the appeal. Pursuant to the Court of Appeal's decision, the Claimant was required to pay back to the Respondent the sum of KShs. 2, 531, 356.45 but he defaulted and the respondent applied to this court to order her to refund the said sum plus interest at 14% from the date of the Court of Appeal decision. The application was not opposed and on 8.10.2018, this court allowed the application.

3. The claimant was, however, aggrieved by the order to pay interest and brought the present application on 17.12.2018 alleging that her Counsel had inadvertently failed to seek leave to appeal against the order. She further contended that the Respondent is likely to execute the order at any time and that it is the interest of justice that she be allowed an opportunity to appeal. The Respondent opposed the Application.

4. The issues for determination are:

- a) Whether this Court should enlarge time so that the Claimant can prefer an appeal.
- b) Whether the Court should issue an order for stay of execution pending appeal.

5. On 4.3.2019, the court directed the counsel for the two sides to file written submission to dispose of the application and mention the case on 3.4.2019 to take a date ruling. The applicant was given 14 days from that day to file and serve her submissions on the respondent. The respondent was given equal time after service by the applicant to file and serve her submissions. The applicant never complied with the directions to file written submissions but the respondent filed hers on 2.4.2019 and urged for the dismissal of the application.

6. After considering the foregoing background, I have formed the opinion that the failure by the applicant to file submission as directed by the court means that she has lost interest in the application and abandoned it. Consequently, I dismiss it with costs for want of prosecution. The applicant is at liberty to seek the same orders at the Court of Appeal.

Disposition

7. The Notice of Motion dated 17.12 2018 is dismissed with costs to the respondent.

Dated, Signed and Delivered in Open Court at Nairobi this 24th day of May 2019.

ONESMUS N. MAKAU

JUDGE