



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1931 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 13th June, 2019)

SOLOMON GITHAE IRUNGU..... CLAIMANT

-VERSUS-

NAIROBI CITY WATER AND

SEWERAGE COMPANY LIMITED.....RESPONDENT

RULING

1. The Claimant/Applicant, Solomon Githae Irungu, filed a Notice of Motion application dated 30/01/2019 brought under *Order 42 Rule 6 of the Civil Procedure Rules, Section 12 of the Industrial Court Act and Section 3A of the Civil Procedure Act* against the Respondent, Nairobi City Water and Sewerage Company Limited, seeking a review and setting aside of the orders made on 06/03/2018, execution of the Decree issued by this Court and the release of Kshs. 778,520/= deposited with the Court to the Claimant.

2. The Application is based on the following grounds that:-

- 1. The Respondent filed a Notice of Motion dated 08/02/2017 and an Application dated 14/11/2017 and was issued with the orders therein.***
- 2. Even after the Respondent served the Claimant's advocates with an unfiled Notice of Appeal and Draft Memorandum of Appeal on 08/07/2016 and used the same to procure Stay orders, it is more than 2 years since the said Appeal was filed amounting to unreasonable delay.***
- 3. The Respondent has no lawful grounds of appeal and only seeks to delay with a view to defeating the course of justice.***
- 4. The Claimant has continued to suffer immense loss and damage since the Respondent has taken inordinately long period to conclude and or prosecute its Appeal.***
- 5. It is clear the Respondent is not willing to prosecute its Appeal since they have not requested for proceedings as is required by law so as to prepare the Appeal.***
- 6. The Respondent itself has rendered its Appeal nugatory by taking inordinately too long to file and/or prosecute it.***
- 7. This inordinate delay is a blatant abuse of the due process of the law and an attempt by the Respondent to deny the Claimant the fruits of the judgment.***
- 8. In the premise it is only fair and in the interest of justice that the said application be heard expeditiously and the orders sought granted.***

3. The Application is supported by the Claimant's Affidavit wherein he avers that Nderi J delivered judgment in his favour and ordered the Respondent to pay him an aggregate of Kshs. 1,341,068.88 and interest on the same at Court rates from the date of filing this suit until payment in full together with costs. That the Respondent complied with the Court orders by paying the decretal sums and that considering it has taken inordinately long to file and prosecute its Appeal, this Application should be heard and his prayers granted.

4. The Respondent filed an Affidavit dated 12/02/2018 sworn by its Advocate who avers that the interim stay orders were issued by the Court after due consideration and that it indeed served the Applicant with a duly filed Notice of Appeal which is annexed as ***GN-1***. That this Court

has not issued the Respondent with the typed proceedings to enable it file its appeal and states that they have made follow ups with the Court's administration as shown in the annexure marked **GN-2**.

5. That the Respondent has no intention of abusing the Court process or delaying justice and that the Respondent's efforts so far to procure certified and typed proceedings illustrate its keenness to prosecute this matter. That the Claimant has no scope to determine the validity of the Respondent's grounds of appeal and that neither will he suffer any prejudice arising from the delay in filing the appeal because the decretal amount is already deposited in Court.

6. The Respondent submits that it is still keen to file its appeal at the Court of Appeal and diligently pursuing the due process as laid down in the Court of Appeal Rules and that based on the foregoing reasons, the Claimant's application should be dismissed with costs to the Respondent.

7. I have examined all averments of the Parties. From the record, the Respondent had pursued this file with the Deputy Registrar on 2/5/2018, and 23rd November 2018 seeking for proceedings. The delay in getting the proceedings of the Court can only be attributed to the Court and not to the Respondent.

8. The Respondent cannot therefore be punished due to the laxity of the Deputy Registrar.

9. I find the application not merited and dismiss it accordingly.

10. Costs to abide the outcome of the Appeal.

Dated and delivered in open Court this 13th day of June, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Omboko holding brief Nyamweya for Defendant – Present

Claimant – Absent