



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 227 OF 2013

(Before Hon. Justice Mathews N. Nduma)

GILBERT KIPTOO KIPKOECH.....1ST CLAIMANT
JOSEPH ORORA AERA.....2ND CLAIMANT
NGUI MUINDI.....3RD CLAIMANT
FRED G. ONDIEK.....4TH CLAIMANT
PETER KYALO.....5TH CLAIMANT
PETER KIPLETING SANG.....6TH CLAIMANT
JOHN MOTARI OMOSA.....7TH CLAIMANT
KENNEDY SIMIYU FWAMBA.....8TH CLAIMANT
LAWRENCE BOSIRE.....9TH CLAIMANT
GIDEON KEMBOL.....10TH CLAIMANT
HARON MONARI TINEGA.....11TH CLAIMANT
RAMADHAN KIMUTAI.....12TH CLAIMANT
THOMSON AGARI MOKAYA.....13TH CLAIMANT
DUKE OBAKI KIRERA.....14TH CLAIMANT
DICKSON KORIR.....15TH CLAIMANT

VERSUS

ELDORET GRAINS LIMITED.....RESPONDENT

RULING

1. Applications dated 18th January 2019 and 12th February 2019 were heard together on 20th February 2019.

2. Application dated 18th January 2019 seeks stay of execution of the judgment delivered on 6th December 2018 by Hon. Rika J. pending hearing and determination of Appeal lodged at the Court of Appeal in Kisumu. The notice of Appeal attached to the application was filed on 18th January 2019 before this court within 14 days from the date the applicants were notified of the judgment on 11th December 2018 by counsel for the claimants/respondents.

3. The applicant states that they have good prospects of success in the intended Appeal. That the claimants/respondents are men of meager means having been casual labourers and may not be in a position to refund the decretal sum if it is paid to them.
4. That this would render the Appeal nugatory. That the applicants are ready to provide security for the judgment sum and costs pending the hearing and determination of the Appeal.
5. The Application dated 12th February 2019 on the other hand prays for an order to lift and or set aside attachment and intended sale of motor vehicle registration number KAF 456U and the goods therein and that the claimant/respondent shoulder the auctioneer's charges if any since the purported attachment has not preceded with service of proclamation as provided in law nor was a notification of same served and a period of 7 clear days had not lapsed since the properties of the applicant were proclaimed.
6. The applications are opposed replying Affidavits filed on 25th January 2019 and 18th February 2019 respectfully.
7. The respondent states that the judgment of the court was pursuant to concession by the applicant in their final submissions after the hearing of the case on the merits that payment to the claimants *"ought to be computed with regard to the report by the labour officer based on the length of the service totaling Kshs. 1,345,976.00 for all claimants involved"*
8. That the applicants cannot now be heard to appeal against an award granted by the judge pursuant to their own concession in court.
9. That the Appeal has no prospects of success. That this is a gimmick to delay justice for the former employees of the applicant.
10. That no prejudice would be occasioned the applicants if stay pending Appeal is not granted.
11. With regard to the application dated 12th February 2019, the respondent states in the replying affidavit filed on 16th February 2018, that the matter is resjudicata since a similar application filed by the applicant on 30th January 2019 was disposed of with costs to the claimants on 12th February 2019.

Determination

12. On 20th February 2019, the court directed that the lorry, motor vehicle Registration number KAT 456U, the subject of the application dated 12th February 2019 be released to the applicant upon deposit of the decretal amount in court. That order determined the application dated 12th February 2019.
13. The only pending issue is whether the applicant is entitled to stay of execution pending Appeal as prayed in the application dated 18th January 2019.
14. The court is satisfied that the intended Appeal is arguable and that same would be rendered nugatory if stay of execution is not granted.
15. The court directs the respondent to deposit the entire decretal sum in court, if the same has not yet been deposited pursuant to the order of the court issued on 20th February 2019.
16. That the claimant/respondent release the lorry Registration Number KAT 456U to the applicant unconditionally upon deposit of the decretal amount as earlier directed by the court. That the claimant/respondent not to defray auctioneer's fees arising from the attachment of the said lorry registration number KAT456U since the attachment was done before expiry of 7 days' notice and without prior service of proclamation on the Applicant.
17. The final orders of the court are as follows:
 - (a) The application for stay of execution pending Appeal is granted subject to deposit of the entire decretal sum in court (if not already done) within 10 days from to date failing which the stay orders to lapse and execution to follow.
 - (b) The claimant/respondent to release to the applicant the motor vehicle registration number KAT 456U together with goods therein (if not yet released) forthwith and without any condition precedent.
 - (c) The claimant/respondent to foot the auctioneer charges for the purported, unprocedural attachment of motor vehicle registration number KAT 456U.
 - (d) Costs in the cause.

Ruling Dated, Signed and delivered this 31st day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Adwar for Applicant

Mr. Kirwa for Respondent

Chrispo – Court Clerk