



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2156 OF 2014

VERONICA OTERI.....CLAIMANT

v

BARCLAYS BANK OF KENYA LTD.....RESPONDENT

RULING

1. For determination is an application dated 3 June 2019 by Barclays Bank Kenya Ltd (Respondent) seeking orders
 1. ...
 2. **THAT** this Honourable Court be pleased to issue an order of stay of execution pending the hearing and determination of this application.
 3. **THAT** this Honourable Court be pleased to issue an order of stay of execution pending the hearing and determination of the Appeal.
 4. **THAT** costs of this application be in the cause.
2. On 3 June 2019, the Court allowed order 2 on condition that the Respondent deposited the decretal sum into Court pending *inter partes* hearing.
3. The Claimant filed a replying affidavit in opposition to the application on 11 June 2019. The Claimant also filed grounds of opposition on 14 June 2019.
4. The Court took arguments on 17 June 2019.
5. On 13 July 2018, Abuodha J delivered judgment in which he found that the termination of the Claimant's employment was unfair, as a consequence of which he awarded him the equivalent of 12 months' salary as compensation, and costs.
6. The Respondent was dissatisfied and it filed a *Notice of Appeal* on 17 July 2018, but nevertheless the Claimant moved to execute.
7. The grounds advanced by the Respondent in support of the application were that the decretal sum was colossal and any execution would deny it a right of appeal; that the Claimant would not be in a position to make restitution were the intended Appeal to succeed; that it stood to suffer irreparable loss and damage; that there had been no delay in bringing the application and that the intended Appeal was meritorious.
8. In opposing the application, the Claimant asserted that the Respondent had concealed material facts; that there was inordinate delay as the application had been filed over 10 months after judgment without any plausible explanation and the Respondent had not cooperated in having a decree extracted/sealed; that the Respondent's conduct was cavalier as it had failed to participate in the taxation of costs; the prayers sought were vague; that the advocate who filed the application was not formally on record for the Respondent; the application was defective for lack of a draft *Memorandum of Appeal*, and that she had a steady source of income.
9. Law books are replete with cases outlining the legal principles a party seeking stay of execution pending appeal should satisfy.
10. Of course the statutory anchor to such applications is Order 42 rule 6 of the Civil Procedure Rules.
11. These legal principles have been discussed and distilled in cases such *Mukuma v Abuoga* (1988) KLR 645, *Jotham Simiyu Wasike & another v Jackson Ongeru & 4 others* (2013) eKLR, *Tabro Transporters Ltd v Absalom Dova Lumba* (2012) eKLR and *Anthony Kiberenge*

