



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 759 OF 2018

KENYA UNION OF ENTERTAINMENT AND

MUSIC INDUSTRY EMPLOYERS.....CLAIMANT

-VERSUS-

MULTIMEDIA UNIVERSITY.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 19th December, 2019)

RULING

The judgment in the suit was delivered on 01.11.2019 in favour of the claimant and against the respondent for:

- a) The respondent to continue deducting and remitting the union dues on monthly basis for its staff being members of the claimant union.
- b) The parties to conclude the recognition agreement by 15.12.2019 to pave way for negotiation of the relevant CBA.
- c) Each party to bear own costs of the suit.

The respondent filed an application on 19.11.2019 through Miller & Company Advocates. The application was supported by the affidavit of Mumbi S. Mwihuriih annexed thereto. The application was under Order 42 Rule 6(1) and Order 51 Rule 1 of the Civil Procedure Rules, section 3A of the Civil Procedure Act and all enabling provisions of the law. The substantive prayers are for orders:

- a) There be a stay of execution of the judgment entered on the 1st November 2019 pending the hearing and determination of the respondent's intended appeal.
- b) The Court be pleased to grant the orders sought herein subject to any conditions as the Court may deem fit.
- c) That the costs of this application be provided for.

The application is urged upon the following supporting grounds:

- a) The judgment was delivered on 01.11.2019 in the claimant's favour. The recognition agreement was to be finalised on 15.12.2019. Union dues were to be deducted and remitted.
- b) The applicant is dissatisfied by the judgement. A notice of appeal has been filed and certified copies of proceedings have been applied for.
- c) The temporary order of stay of execution is lapsing on 15.12.2019
- d) If application is not granted the claimant will proceed to execute the same.
- e) The applicant will comply with any terms of security as precondition to granting of the application.

The claimant urged the Court to rely on the material on record and to render a ruling.

The Court has considered the orders in the judgment. Order 1 relates to deduction of union dues and remitting the same to the claimant with respect to employees who have joined the claimant. The money to be deducted belongs to the union members. The Court returns that in such circumstances continued deduction and remission will not prejudice the applicant and order (a) will not be stayed accordingly.

The Court considers that order (b) in the judgment is amenable to being stayed in the interest of justice to allow the applicant ventilate the proposed appeal.

In conclusion, the application date 29.11.2019 is hereby determined with orders:

a) There be stay of execution of the judgment and decree herein pending the hearing and determination of the intended appeal against the judgment but subject to the following conditions:

i. the applicant to fully comply with order (a) in the judgment until the appeal is heard and determined; and

ii. the applicant to file the record of appeal not later than 01.03.2020 and in default execution to issue for the entire decree as appropriate.

b) The costs of the application to abide the outcome of the intended appeal.

Signed, dated and delivered in court at Nairobi this Thursday, 19th December, 2019.

BYRAM ONGAYA

JUDGE