



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 1511 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 17th December, 2019)

BONIFACE NZAU MUIA.....CLAIMANT

VERSUS

SHENGLI ENGINEERING

CONSTRUCTION COMPANY.....1ST RESPONDENT

CANNON ASSURANCE COMPANY LTD.....2ND RESPONDENT

RULING

1. Before this Court is the Respondents' Notice of Motion Application dated 8th March 2019 where they seek the following orders-

a. Spent.

b. THAT there be stay of execution of the decree of this Court given on 8.10.2018 and issued on 17.1.2019 pending the hearing and determination of this application.

c. THAT the court be pleased to extend the time within which the Respondents may file the Notice of Appeal to the Court of Appeal in respect of the Judgment of this Honourable Court delivered on 8.10.2018.

d. THAT the Honourable court be pleased to order a stay of execution of the decree issued herein pending the filing and hearing of the intended Appeal in the Court of Appeal.

e. THAT the cost of this Application be provided for.

2. The Application is based on the grounds set out in the motion and the Supporting Affidavit of Martha Mutoro sworn on 8th March 2019.

3. The Applicants aver that they are aggrieved by the judgment wherein the Claimant was awarded KShs. 2,500,000.00; and the 2nd Applicant's joinder to these proceedings and wish to appeal. However, it is their case that they failed to take immediate action concerning the judgment delivered on 8th October 2018 because the previous advocates declined to hand over the file despite several requisitions. In light of the circumstances that occasioned the delay, the Applicants urge this Court to exercise its discretion and grant the orders sought.

4. The Applicants aver that the impending execution will greatly interfere with their operations due to the nature of their relationship. They further aver that they are willing to offer such security as shall be directed by the Court as a means of securing the Claimant's interests, in the event the appeal does not succeed.

5. It is their case that the Claimant will suffer no prejudice if the orders sought are granted.

6. The Claimant has opposed this Application vide his Replying Affidavit sworn on 20th May 2019. He avers that the Application has been made in bad faith and in an attempt to deny him the fruits of the judgment.

7. Further, the Applicants have not issued a reasonable explanation to warrant the extension of time. As such, it is in the interest of justice that the Application be dismissed with costs.

8. The Application was disposed of by way of written submissions where the Applicants filed their submissions on 16th September 2019. The Claimant opted not to file submissions.

Submissions by the Parties

9. The Applicants submit that the delay in filing the application was occasioned by their Counsel and that such a mistake should not be visited upon an innocent litigant. It is their position that this Court has the discretion to allow for extension of time for the purpose of filing their Notice of Appeal.

10. The Applicants further submit that they will suffer irreparable harm unless an order for stay of execution is granted. It is their position that the Claimant stands to suffer no prejudice if the Application is allowed and that he has not demonstrated to this Court the means he will use to refund the decretal sum should the appeal succeed.

11. They urge this Court to grant the orders sought and rely on the cases of **Chris Munga N. Bichage vs. Richard Nyagaka Tongi & 2 Others [2013] eKLR** and **Mohammed Salim T/A Choice Butchery vs. Nasserpuria Memon Jamat [2013] eKLR** to reinforce their case.

12. I have examined averments of both Parties. I note that the Applicants have not filed any appeal despite delivery of this Court's judgement on 8/10/2018 and the time within which to file the appeal has expired. There is no basis upon which stay can be granted in the circumstances.

13. It is my view that the Applicants should 1st have considered filing an application before Court of Appeal to get orders to extend time for filing appeal before seeking stay. I find the application not merited. I dismiss it accordingly with costs.

Dated and delivered in open Court this 17th day of December, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of

Khamala holding brief Kioko for Applicant

Mutunga for Respondent – Absent