



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 264 OF 2016

BETWEEN

ELIZABETH MWEDE TIMOTHY.....CLAIMANT

VERSUS

BRINKS SECURITY SERVICES LTD.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

.N. Matara & Company Advocates for the Claimant

M.M. Kimuli & Company, Advocates for the Respondent

RULING

1. Judgment was delivered in favour of the Claimant for a total sum of Kshs. 902,000 on 23rd November 2018. The Respondent was ordered also, to avail the Certificate of Service to the Claimant, and pay Costs and Interest.
2. The Respondent filed a Notice of Appeal on 29th January 2019. There is no evidence that the Appeal has been filed. Typed copies of the proceedings are ready.
3. Instead, the Respondent has filed a multiplicity of Applications asking the Court to stay execution of the decree, and also on another occasion, seeking to satisfy the decree in instalments.
4. The Applications appear to have been filed before different Judges during the Court Vacation, occasionally resulting in confusing orders.
5. One such Application dated 15th April 2019 sought stay of execution, and resulted in confusing orders issued on 17th April 2019. The Court set aside the Orders, which had issued in the absence of the Claimant.
6. Rather than fix the Application dated 15th April 2019 for *inter parte* hearing, the Respondent filed another Application dated 5th August 2019, under Vacation Rules, seeking interim stay of execution, and asking the Court to set down the Application dated 15th April, 2019 for hearing.
7. Does a Party have to file an Application, to ask the Court to set down an existing Application for hearing?
8. The Respondent was granted interim stay of execution on the ground that it deposits the decretal sum of Kshs. 1,055,033 in Court on or before 14th August 2019.
9. The sum was deposited on 19th August 2019. The Respondent wrote to the Court, explaining there was delay in transmitting the file from the Court in Nairobi to Mombasa.
10. Essentially, what the Parties are presently seeking from the Court is that they are given a date, to argue *inter partes* the Application dated 15th April 2019.

11. The Court does not think it is necessary to grant this prayer.

12. The Parties have effectively argued in their Submissions on the Application of 5th August 2019, the Application of 15th April 2019. There are Affidavits on record filed by the Parties, detailing their respective positions on the subject of stay of execution, pending filing, hearing and determination of the Intended Appeal.

13. Consequently, the Court consolidates the Applications dated 15th April 2019 and 5th August 2019, and grants the following Orders:-

IT IS ORDERED:-

a) The Respondent is granted an order of stay of execution of decree pending Appeal on the following conditions:

i) Half of the decretal sum deposited in Court, at Kshs. 527,516, shall be released to the Claimant forthwith.

ii) The other half shall be retained in Court pending Appeal.

b) The issue raised by the Claimant, on sustainability of the Intended Appeal, shall be dealt with by the Court of Appeal.

Dated and delivered at Mombasa this 13th day of December 2019.

James Rika

Judge