



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 293 OF 2015

EDWARD ODONGO OWITI.....CLAIMANT

VERSUS

SALAMA HOTEL LIMITED.....RESPONDENT

RULING

1. By a motion dated 23rd February, 2017 the respondent sought a stay of execution of the court's judgement delivered on 10th February, 2017 pending intended appeal.
2. The application was based on the grounds among others that the respondent was aggrieved by the court's judgement and had filed a Notice of Appeal against the said judgement and further that the appeal was arguable and had a high chance of success.
3. The draft memorandum of appeal attached to the application set out the grounds of appeal which included that:
 - a. *The learned judge erred in entering judgement in favour of the claimant.*
 - b. *The learned judge erred in failing to appreciate the triable issues raised in the appellant's response to the statement of claim.*
 - c. *The learned judge erred in holding that the claimant had proved the case on a balance of probabilities.*
4. This matter proceeded ex-parte after the court was reasonably convinced that the respondent was duly served. In its judgement the court observed that the onus of keeping employment records was on the employer. If it was true as the respondent alleged that the claimant was not its employee, nothing prevented them from coming to court and put the claimant to task. That did not happen. The claimant's averments therefore remained uncontroverted.
5. The respondent as would have been expected never attempted to set aside the ex-parte judgement. They now want to appeal against the judgement based on contested averments in their memorandum of response. Averments in pleading remain as such until supported by evidence and subjected to cross- examination. The court is not bound to consider them in the absence of any supporting evidence.
6. In the circumstance the court is not persuaded that the respondent has any arguable appeal to merit a stay of the courts judgement pending appeal.
7. The application is therefore dismissed with costs.
8. It is so ordered.

Dated at Nairobi on this 16th day of February 2018

Abuodha J. N.

Judge

Delivered on this 16th day of February 2018

In the presence of:-

..... for the claimant

..... for the Respondent

Abuodha J. N.

Judge