



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1500 OF 2013**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 8<sup>th</sup> February 2018)**

**DOMINIC NJOROGE NDEGWA .....CLAIMANT**

**VERSUS**

**FORTCOM CONSULT LIMITED .....RESPONDENT**

**RULING**

1. Application before Court is one dated 29<sup>th</sup> October 2017. it is an application filed by the Respondents Applicant herein seeking orders as follows:-

- 1. That this matter be certified urgent and heard on a priority basis at the first instance.***
- 2. That pending the inter-parte hearing and determination of this application this Honourable Court be pleased to temporarily stay the entire judgement delivered on 18<sup>th</sup> September 2017 by Hon. Justice Wasilwa, and all the consequential and orders there from.***
- 3. That this Honourable Court be pleased to stay the entire judgement delivered on 18<sup>th</sup> September 2017 by Hon, Justice Wasilwa, and all the consequential and orders there from pending the hearing and determination of the intended appeal.***
- 4. That costs of this application be provided for.***

2. The Application is based on the grounds below and further on the annexed affidavit of one Simon Ngugi, the Applicant's Managing Director herein:-

- 1. That judgment was entered against the defendant/applicant herein on 18<sup>th</sup> September 2017 by Honourable Justice Wasilwa.***
- 2. That the Honourable Judge erred in law and fact in failing to consider and take into account relevant facts in arriving at its decision.***
- 3. That the Honourable Judge erred in fact and law by failing to take into account material evidence in arriving at its decision.***
- 4. That the Defendant being dissatisfied with the judgment now intends to appeal against the said decision and has since filed a notice of appeal dated and filed on 18<sup>th</sup> October 2017.***

**5. That the intended appeal has a high chance of success and therefore the judgment entered against the defendant herein ought to be stayed pending the outcome of the intended appeal.**

**6. That this application has been made without unreasonable delay.**

**7. That the Applicant is willing to furnish such security as will be reasonable for the performance of the said judgement pending the hearing and determination of the intended appeal.**

**8. That the applicant stands to suffer an irreparable and substantial loss if this application is not allowed as the Respondent will proceed with execution, to the detriment of the Applicant, and the intended appeal will be rendered nugatory.**

**9. That the Respondent will suffer no prejudice if this application is allowed.**

**10. That it is therefore only mete and just that the application herein be allowed and orders issued accordingly.**

3. The Applicant's affidavit reiterates averments made in the above grounds. The Applicants aver that if execution is allowed to proceed, the appeal would be rendered nugatory.

4. The Respondents opposed the application. They averred that there is no appeal before the Court of Appeal and the Notice filed is defective and it was filed 31 days after the judgement was delivered. They aver that the appeal has not chances of appeal and should be dismissed.

5. The Applicants stated that they are willing to furnish any security ordered by Court.

6. I have considered the averments of the parties. Order 42 rule 6(2) of the Civil Procedure Rules state as follows:-

**“(2) No order for stay of execution shall be made under subrule (1) unless:**

**a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

**b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.**

7. What the Court should consider before granting stay is as above. The Applicants have filed this application without delay qualifying (a) above. They have also indicated they are ready to deposit any security that could be ordered by Court and therefore meeting the requirement of (b) above.

8. In view of the above provisions being satisfied, and so that the appeal if any is not rendered nugatory, I will allow the application for stay on condition that the decretal sum is deposited in an interest earning account held in the joint names of counsel on record within 30 days. In default execution to proceed.

9. Costs in the cause.

Read in open Court this **8<sup>th</sup> day of February, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Wesonga holding brief for Wangila for Claimant – Present

Hawa for Respondent – Present