



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA
CAUSE NUMBER 79 OF 2013
BETWEEN

- 1. MARIAM SAIDI MWABORA**
- 2. ANDERSON K. GARAMA**
- 3. BENSON K. KITETO**
- 4. SAMSON S. MUBIRU**
- 5. SIGFRIED E. JOGSCHAT**
- 6. ANTHONY BWIRE AKUKUA**
- 7. JOSEPH ONGUTI**
- 8. STEPHEN K NDEGWA**
- 9. SAMUEL O. MOMANYI**
- 10. CHRISTOPHER MWANGOLA**
- 11. DANIEL O. OМУYA**
- 12. OBADIAH G. MBUGUA**
- 13. ESPIE NJUGUNA**
- 14. MOSES S. KILUSU**
- 15. GEORGE K. MULWA**
- 16. JANE MAINA**
- 17. SWALEH K KURAUKA**
- 18. MINA JAFFAH**
- 19. ESTHER W. KAMAU**
- 20. RASHID MADEMU**
- 21. ALI HAMISI MAMBO**
- 22. JACKSON MUTHAMA MUTISO**

23. KENNEDY N. ONCHOMBA
24. JONATHAN KAMANDA NGUMA
25. JOHN OTECH ACHIENG
26. MWANIA KITUNGUO
27. MARTHA NJERI KIGWINI
28. NANCY NJERI KARIUKI
29. TOM KIGINDWA NYANGWESO
30. JONES KERONGO OMWERI
31. ABDUL M. MWEDO
32. ALEX M. NYANGE
33. EDWARD SIMIYU MAKONGE
34. JOHN NDIPO ISHMAEL
35. KENNETH ZEBI MARE
36. MEJUMA HAMISI MACHESO
37. ROSELYN NDUTA NJENGA
38. FREDRICK NATO WEKESA
39. SOFIA HAMISI MFUKO
40. PAULINE MULI KASIU
41. MARDSEN K. MBITSI
42. REGINA KOKI GATILU
43. JOSEPH MUMA OMWAGA
44. ASHA K. MBONDE
45. ALI WATURI MWAKUTALA
46. PETER W. KAMAU
47. NORMAN NDAMBO
48. SOLOMON CHARO
49. JOSEPH LWAMBI
50. PAUL ABUTOKELVIN NGALA
51. KELVIN NGALA
52. ABDALLA MASHOBO
53. ANDERSON MUTENGO
54. SAMMY MUTUA

55. RAMADHANI NYAWA
56. LEONARD K. CHUBUA
57. ATHUMANI MWARACHETI
58. JOHNSON SULUBU BEJA
59. RASHID SALIM MWAKULOLA
60. MWANATUMU OMAR NGUTA
61. JOHN MOKOMBA OBOIKO
62. AGNES M MUTUNGA
63. RAMADHAN MWASERA
64. JUMA SWALEH
65. SAMSON KASUNGU
66. DOMINIC AMANI MWARUBE
67. DEOGRATIAS WANDERA EKEYA
68. SAIDIA MZURI THOYA
69. ALHONSE AMBANI BARASA
70. MARK MOTURI ONCHANGWA
71. HARRISON NYAWA SHEHI.....CLAIMANTS

VERSUS

1. HOTEL SPAN LIMITED
2. R.T. DUNNET
3. TRANSNATIONAL BANK LIMITED
4. SPIRE PROPERTIES [K] LIMITED..... RESPONDENTS

RULING

1. Judgment was delivered in favour of 57 Claimants in this Cause, on 8th September 2017.
2. The Respondents have filed Notices of Appeal, and applied for typed and certified copies of Proceedings and Judgment, to enable them compile and file records of Appeal.
3. The 4th Respondent filed an Application for Stay of Execution on 2nd November 2017, supported by the Affidavit of Carren Sadia, sworn on 31st October 2017. The Co-Respondents associate themselves fully, with the 4th Respondent's Application. The Claimants oppose the Application through their Replying Affidavit, sworn by Samuel Momanyi Omao on 21st November 2017.
4. The Application was heard on the 22nd February 2018.
5. The Court had earlier granted interim orders of Stay of Execution.
6. The Respondents submit they are ready to comply with any conditions the Court may deem fit to impose in granting orders of Stay of Execution.
7. The Claimants submit this is an old dispute. They would be prejudiced by further delay in payment of their terminal benefits and damages, as granted by the Court.

The Court Finds:-

8. The Court agrees with the Claimants that this is an old dispute. The Court heard the dispute fairly expeditiously, recognizing that this is an old dispute, which needs to be brought to an end at the earliest.
9. The Court notes also, that there are extraordinary, complex, issues of law raised in the dispute. Although the Respondents have not supplied the Court with their draft Memoranda of Appeal, the Court feels these extraordinary, complex issues, need to be ventilated at the Court above the Trial Court. There are novel and arguable issues of law in this dispute. In their bills of costs on record, the Claimants make reference to the nature and importance of the proceedings. This would suggest there are arguable issues of law. The Respondents should nonetheless, have clarified what these issues are by attaching draft Memoranda of Appeal, to the Application.
10. This Court does not ordinarily stay execution of its orders pending appeal, unless it is satisfied, or strongly feels, there are recondite matters of law, likely to be presented before the Court above the Trial Court.
11. For the sake of development of employment law, it is best that the Respondents are facilitated in making their Appeals. The exercise of the right of appeal however, must not be enjoyed in a manner that unreasonably keeps the Claimants waiting.
12. Proceedings of the Court had already been typed, at the time the undersigned Judge, gave directions on 8th October 2014. It is not expected that proceedings from 8th October 2014, to-date, should take too long to be typed and certified. Already, Parties have a typed copy of the Judgment. The Court of Appeal has been hearing Appeals quite expeditiously. There is no reason why the Intended Appeal should not be presented, and heard within a reasonable time.
13. Lastly, the Respondents have offered to abide by any conditions the Court deems fit to impose, in granting stay.

IT IS ORDERED:-

(a) Stay of execution of Judgment delivered on 8th September 2017, is granted, on the following conditions:-

(i) Terminal dues at Kshs. 29,603,973, together with accrued interest, shall be deposited in a joint, interest-earning bank account, in the names of Gikandi & Company Advocates, and Muturi Gakuo & Kibaara Advocates, within 45 days of this Ruling.

(ii) General Damages at Kshs. 28,500,000 shall be deposited in a joint, interest-earning bank account in the names of Gikandi & Company Advocates, Muturi Gakuo & Kibaara Advocates and Were & Oonge Advocates, within 45 days of this Ruling.

(iii) The Taxing Master shall proceed with taxation of the bills of costs filed by the Claimants.

(iv) Taxed Costs shall be deposited in a joint, interest-earning bank account, in the names of the 3 Law Firms named under paragraph (ii) above, within 30 days of taxation.

(v) In default execution shall proceed, to the extent of the defaulting Party's liability under the Judgment.

b) Parties are at liberty to adjust these conditions through a written Consent.

c) The Deputy Registrar of the Court to ensure remaining proceedings are typed, certified and availed to the Parties, within 21 days of this Ruling.

d) No order on the costs of the Application.

Dated and delivered at Mombasa this 20th day of March 2018.

James Rika

Judge