



REPUBLIC OF KENYA

THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 156 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 13th March, 2018)

CHRISTINE NAMUKWI MUHANGANI.....PLAINTIFF/ RESPONDENT

VERSUS

P. J. DAVE FLOWERS LIMITED.....DEFENDANT/APPLICANT

RULING

1. The Application in Court is the one dated 30/10/2017. The Application was filed under Certified of Urgency and brought through a Notice of Motion filed under Section 12(1), (3) I & viii) of the Industrial Court Act, Order 42 Rule 6(2) of the Civil Procedure Rules and Section 3, 3A of the Civil Procedure Act and all other enabling provisions of the law.

2. The Applicant seeks orders as follows:-

1. That this application be certified urgent.

2. That stay of execution of judgement in PMCC No. 355 of 2015 – KAJIADO entered on 11th October 2016 or any order emanating thereof be granted pending the hearing and determination of this application.

3. That stay of execution of judgement in PMCC No. 355 of 2015 – KAJIADO entered on 11th October 2016 or any orders emanating thereof be granted pending the hearing and determination of Civil Appeal Number 18 of 2016 – Kajiado.

4. That the suit PMCC No. 355 of 2012 (Kajiado) Christine Namukwi Muhangani v P.J. Dave Flowers Limited be transferred to the Employment and Labour Relations Court at Nairobi for hearing and final disposition of the same.

5. That the Court be pleased to grant orders for filing an appeal out of time.

6. That the orders dismissing our application for stay dated 25th July 2017 be set aside pending hearing and determination of this application.

7. That costs be in the cause.

3. The Application is based in the following grounds:

1. That the Defendant/Applicant had filed an application under Certificate of Urgency for stay pending appeal in the lower Court original file – PMCC number 355 of 2015 – Kajiado but the same could not be heard and determined because of the issue of jurisdiction.

2. That the Defendant has already filed an appeal being against the judgment delivered on 11th October 2016 being Civil Appeal number 18 of 2016.

3. That the trial Court dismissed our application for stay pending appeal dated 9th November 2016; on 25th July 2017 without issuing a notice as they were supposed to.

4. That we only learnt of the intended attachment after our client was served with warrants of attachment and on perusal we found that ruling had already been delivered even without being notified as we had been promised by the Kajiado Law Courts registry.

5. That since the ruling of trial Court was delivered in our absence and without issuance of notice of entry of such ruling time has lapsed to file our appeal.

6. That we had moved the High Court for a stay order and the same was granted however the Court lacks jurisdiction to entertain employment matters which is a preserve of this Honourable Court.

7. That the High Court granted a temporary stay of 14 days which are almost over and if our application is not allowed the Plaintiff will move in haste to attach our Client's property.

8. That it is necessary to seek this Honourable Court leave to file an appeal out of time and that the delay was occasioned by an inadvertence beyond our control hence the need of the Courts urgent intervention.

9. That the Plaintiff/Respondent will execute against the Defendant as there is no stay of execution and has already begun the process of execution by filing warrant of attachments.

10. That is only fair and just that the stay of execution sought herein be granted as prayed by the Defendant/Applicant herein.

11. That the Plaintiff will not suffer any prejudice if the orders herein are granted.

4. The Application is also supported by the supporting affidavit of one Jonathan Omangi, the Counsel for the Applicant herein. The affidavit reiterates the averments in the grounds above.

5. The Respondent opposed this application. They submitted that the same is ill advised, misconceived and an abuse of the Court process. They aver that Appeal No. 18/2016 is lodged in a Court devoid of jurisdiction and is therefore void ab initia hence cannot be pending in any manner whatsoever.

6. They also submit that case No. PMCC No. 355 of 2015 at Kajiado to this Court is also untenable as this case is already concluded by the trial Court.

7. I have considered the averments of the parties plus submissions filed. I note that the prayer to transfer PMCC No. 355/2015 to this Court is untenable because PMCC No. 355/2015 is already concluded and judgment delivered.

8. On the issue of transferring a pending appeal to this Court, I believe the appeal is pending before a Court of competent and concurrent jurisdiction. The said application should be made before the said Court. Already the appeal is before Kajiado High Court which Court has already made some determination/orders on the same file.

9. It would be an abuse of the Court process for this Court to presuppose to issue orders, which may be contrary to the orders made by the High Court Kajiado. I therefore decline to issue orders as prayed. I dismiss this Application accordingly with costs to the Respondents.

Dated and delivered in open Court this 13th day of March, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties