



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 24 OF 2014

PETER CHEGE KANJA.....1st CLAIMANT

EDWARD MAURA KARANJA.....2nd CLAIMANT

SIMON NGUGI MBURU.....3rd CLAIMANT

SAMSON KAROKI NDUNGU.....4th CLAIMANT

PAUL NZIOKI NDALI.....5th CLAIMANT

PETER KARANJA KAMOTHO.....6th CLAIMANT

JOSEPH KURIA MBURU.....7th CLAIMANT

v

CHINA WU YI LTD.....RESPONDENT

RULING NO. 4

1. In a judgment delivered on 28 July 2017, the Court found and held that the Claimants contracts with the Respondent ended lawfully but that they were underpaid throughout the employment period and were entitled to notice pay.
2. The Court in the same judgment made appropriate awards to be paid with interest at Court rates from the date the Cause was filed.
3. The Claimants filed a Bill of Costs on 23 August 2017.
4. On 28 August 2017, the Respondent moved Court under certificate of urgency seeking stay of execution pending hearing and determination of appeal, and on 14 September 2017, the firm of Wambugu & Muriuki Advocates filed a Notice of Change of Advocates to come on record for the Respondent and on 11 January 2018, a consent allowing the change was filed in Court.
5. In a ruling delivered on 10 November 2017, the Court dismissed the Respondent's application seeking stay of execution pending appeal with costs.
6. On 31 January 2018, the Claimants costs were taxed at Kshs 14,060/- after which the Claimants moved to execute.
7. Auctioneers were duly instructed and they proclaimed and obtained warrants of attachment on 26 February 2018.
8. The move prompted the Respondent to move the Court on 9 March 2018 seeking stay of execution pending hearing and determination of an appeal.
9. On 12 March 2018, the Court granted temporary stay on condition that the decretal sum of Kshs 11,174,393/70 would be deposited into Court before 16 March 2018.
10. The Respondent did not comply with the condition but it instead moved the Court again on 13 March 2018 seeking an order varying the condition upon which the stay of execution was granted.

11. After hearing both parties, on 15 March 2018 the Court declined to vary the condition upon which the stay of execution was allowed.
12. Undeterred, the Respondent moved the Court again on 21 March 2018 seeking orders
 1.
 2. **THAT** this Honourable Court be pleased to review its orders issued on 15th March, 2018 by the Hon. Justice Radido requiring the Applicant to deposit Kshs. 11, 174,393.70 as security deposit by 22nd March, 2018 pending the hearing and determination of the Application dated 8th March, 2018 interpartes.
 3. **THAT** this Honourable Court be pleased to allow the Applicant to deposit a Bank Guarantee of a similar amount in lieu of the cash deposit.
 4. **THAT** Costs of this Application be provide for.
13. The ground upon which the review application is anchored on is that the Respondent had come upon new evidence which was not available to it when it filed the application filed in Court on 9 March 2018.
14. The new piece of evidence is the Respondent's bank statement from Standard Chartered Bank Ltd.
15. With all respect to the Respondent, its present application is not only misplaced but is an abuse of the Court process as well.
16. When it presented its application to vary the condition for stay on 12 March 2018, the Respondent knew the threshold it has to satisfy.
17. If its bank statement was material to demonstrate its liquidity, that evidence was available to it then and it must be an afterthought to seek to introduce it at this juncture.
18. The bank statement cannot by the stretch of the imagination qualify as new evidence which was not available at the material time had due diligence been exercised.
19. Abuse of the Court process arises because the Respondent knew that it had moved the Court on 28 August 2017 seeking stay of execution pending appeal and that the Court had in a ruling delivered on 10 November 2017 dismissed the application with costs.
20. Instead of weighing its options, the Respondent, perhaps taking advantage of the transfer of the Judge who had interacted with the file filed another application on 9 March 2018.
21. There was no disclosure at all that a previous application had been dismissed after a hearing on the merits.
22. The upshot of the above is that the Court finds no merit in the application dated 21 March 2018 seeking review and dismisses it with costs to the Claimants.
23. And in order to protect its process from abuse, the Court further on its own motion strikes out the application dated 8 March 2018 and filed in Court on 9 March 2018.
24. The Respondent's advocate who filed the application on 9 March 2018 to personally bear the costs of the application.
25. For the avoidance of doubt, execution which had commenced can proceed unless the Court of Appeal decrees otherwise.

Delivered, dated and signed in Nairobi on this 6th day of April 2018.

Radido Stephen

Judge

Appearances

Claimants In person

For Respondent Mr. Kairu instructed by Wambugu & Muriuki Advocates

Court Assistant Salome