



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 24 OF 2014

PETER CHEGE KANJA.....1st CLAIMANT

EDWARD MWAURA KARANJA.....2nd CLAIMANT

SIMON NGUGI MBURU.....3rd CLAIMANT

SAMSON KAROKI NDUNGU.....4th CLAIMANT

PAUL NZIOKI NDALI.....5th CLAIMANT

PETER KARANJA KIMOTHO.....6th CLAIMANT

JOSEPH KURIA MBURU.....7th CLAIMANT

v

CHINA WU YI CO. LTD.....RESPONDENT

RULING

1. This is the fifth application by the Respondent in this file after judgment was delivered on 28 July 2017 by Nderi Nduma PJ.
2. In the application dated 17 April 2018, the Respondent seeks orders
 1. ...
 2. **THAT** this Honourable Court be pleased to review the Ruling of Justice Nduma Nderi delivered on 10th November, 2017 dismissing its application for stay pending hearing and determination of the Appeal.
 3. **THAT** this Honourable Court be pleased to stay execution of the judgment delivered on 28th July, 2017 pending hearing and determination of Appeal and allow the Applicant to deposit security of the entire decretal amount.
 4. **THAT** in the alternative, this Honourable Court be pleased to stay of execution of the judgment delivered on 28th July, 2017 pending the hearing and determination of the application for stay at the Court of Appeal scheduled on 28th June, 2018.
3. Ongaya J, before whom the application was placed on the same day certified it as urgent and allowed stay of execution on condition that the Respondent deposited the decretal sum of Kshs 11,174,393/70 in Court by 20 April 2018.
4. The Respondent complied with the condition and deposited the amount and was issued with receipts 0384530 for Kshs 2,000,000/- and 0384529 for Kshs 9,174,393/70 respectively.
5. The 3rd Claimant, on behalf of the Claimants filed a replying affidavit in opposition to the application on 19 April 2018 and the Court took oral submissions on 15 May 2018 and reserved ruling to today.
6. Some background, once again would be in order.
7. On 28 July 2017, Nderi Nduma PJ found and held that the Respondent did not give the Claimants requisite notice of termination of

employment and that the Claimants were underpaid during their employment.

8. Each of the Claimants were awarded pay in lieu of notice and underpayments.

9. Being dissatisfied, the Respondent lodged a Notice of Appeal on 11 August 2017.

10. The Deputy Registrar issued a decree on 23 August 2017 and the Claimants moved to execute.

11. On 28 August 2017, the Respondent moved Court seeking an order of stay of execution pending the hearing and determination of the Appeal.

12. The application was dismissed on 10 November 2017 (it is against that dismissal order that the Respondent now seeks an order of review and further that stay of execution be granted pending the hearing of an application for stay in the Court of Appeal).

13. Earlier, on 9 March 2018, the Respondent again moved the Court seeking orders staying execution of the judgment pending the hearing and determination of the Appeal it had lodged.

14. The Court granted interim stay of execution on 12 March 2018 pending *inter partes* hearing, but the Respondent did not comply with the condition within the agreed timelines.

15. Consequently, the Respondent moved the Court on 13 March 2018 seeking an order varying the condition upon which the interim stay had been granted, but the Court in a ruling delivered on 15 March 2018 declined to vary the condition.

16. The Respondent again moved the Court on 21 March 2018 seeking orders seeking a review of the ruling. The Court yet again dismissed the application on 6 April 2018 paving way for the instant application.

17. The Court has considered the record including previous rulings, the instant application and its supporting affidavit, the replying affidavit in opposition, the authorities cited and the oral submissions.

Review of the orders of 10 November 2017

18. In seeking the review of the dismissal order of 10 November 2017, the Respondent contends that it has new and relevant information, being that it is ready and willing and has deposited the decretal sum in Court.

19. The Court has keenly perused the ruling by Nderi Nduma PJ on 10 November 2017. The Judge dismissed the application by the Respondent in its entirety, and therefore this Court would be sitting on appeal on its own decision were it to concede to the invitation by the Respondent for review.

20. It is not in dispute that after the dismissal (or may be after as date was not disclosed), the Respondent moved the Court of Appeal for stay of execution.

21. The application is said to be still pending before the Court of Appeal.

22. In the view of the Court, the willingness and/or deposit of security for due performance by itself does not warrant an order of review or stay pending appeal. There are factors to be considered and the Respondent did not suggest it had met them.

23. In the circumstances, the review jurisdiction of this Court is not available to the Respondent.

Stay of execution pending hearing by Court of Appeal of a stay application

24. This Court has more than once, on 10 November 2017 and on 6 April 2018 declined to grant stay of execution pending appeal.

25. The Respondent is attempting to have a third bite at the cherry without disclosing or drawing the attention of the Court to any statutory or equitable principle which clothes the Court with the jurisdiction to grant stay of execution pending determination by the Court of Appeal of a stay of execution application where this Court has previously declined the invitation.

26. In the view of the Court, this is a classic case of a party represented by an advocate intent on using all the technicalities of the law against lay Kenyans who successfully prosecuted their case, from enjoying the benefits of their successful litigation.

27. The application is not only unmerited but smacks of an abuse of the Court process.

28. The Court orders that the application dated 17 April 2018 be dismissed with costs to the Claimants, and further that the Deputy Registrar releases the monies deposited in Court to the Claimants in terms of the decree issued on 23 August 2017.

Delivered, dated and signed in Nairobi on this 19th day of June 2018.

Radido Stephen

Judge

Appearances

Claimants in person

For Respondent Mr. Kairo instructed by Wambugu & Muriuki Advocates

Court Assistant Lindsey