



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 534 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 24th July, 2018)

EPHANTUS GITHUKU NDUNGU.....CLAIMANT

VERSUS

KENOL KOBIL LIMITED.....RESPONDENT

RULING

1. The Application before me is the Notice of Motion Application dated 21.8.2017 that seeks orders for stay of this Court's judgment/decree delivered on 31/5/2017 and all consequential orders arising thereto pending determination of an intended appeal.
2. The Applicant avers that he has already filed a Notice of Appeal and applied for typed proceedings to facilitate the lodging of the intended appeal.
3. The Application is supported by the Applicant's supporting affidavit averring that if the orders sought are not granted, the Applicant will suffer substantial loss since the Respondent may proceed and execute the decree.
4. The Respondent/Claimant opposed this Application indicating that the Application was filed after an inordinate delay.
5. The judgement was delivered on 31/5/2017 and the Application was filed on 21.8.2017 which the Claimant aver is a big delay and was only filed after the Claimants filed their bill of costs of 31.7.2017 together with notice of taxation dated 3.8.2017 indicating that the matter was due for taxation on 22.8.2017.
6. They aver that the intention of the Applicant was to scuttle the taxation of the bill of costs.
7. The Claimants further aver that the Applicant's Application does not meet the threshold of all three conditions for grant of such orders as prayed.
8. I have examined the averments of both parties plus submissions filed.
9. 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.

10. From this order, the Court can only grant orders of stay if the above three conditions have been fulfilled. The Applicant must establish he stands to lose substantially if the orders are not granted. The Applicant must also establish that the Application has been made without unreasonable delay and also that he is willing to provide such sufficient security as may be ordered by Court.

11. Whereas the Applicant avers he stands to lose substantially if the Application is not granted, he has to demonstrate this. The Applicant submits that the award is quite substantial to the tune of KShs.5,780,000= and it would be difficult to receive the money from the Claimant if the appeal is successful.

12. In this Court's view, the fact that award is substantial alone is not a demonstration of substantial loss. The Applicant needs to establish how the substantial amount granted if at all will affect them. This I believe the Claimant failed to do.

13. On the same vein the Applicant came to Court seeking the orders sought after 3 months which indicate substantial delay.

14. In my view, the Applicants were jolted in seeing the orders sought just after the Claimant moved Court to tax his bill of costs. The delay of 3 months is unreasonable and inexcusable.

15. On security, the Applicants have submitted that they are willing to adhere to any orders as may be granted by Court.

16. Having considered the above arguments, I find that the Application was filed within inexcusable delay of 3 months. That notwithstanding I exercise my discretion and allow the Application for stay in order to preserve the substratum of the pending appeal. This is granted on condition that the Applicant releases ½ the decretal sum to the Respondent/Claimant and deposits the other ½ in an interest earning account held in the joint names of Counsels on record within 60 days. In default execution to issue.

Dated and delivered in open Court this 24th day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Naima holding brief for Ochuch for Respondent/Applicant

Respondent/Claimant – Absent