



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 595 OF 2014

MARTIN ODHIAMBO OSULA.....CLAIMANT

v

LOAD RUNNERS LIMITED.....RESPONDENT

Consolidated with

CAUSE NO. 596 OF 2014

MARTIN MUSUMBI OLIERO.....CLAIMANT

v

LOAD RUNNERS LIMITED.....RESPONDENT

RULING

1. In a judgment delivered on 18 January 2016, the Court found and held that the termination of the employment of the Claimants were unfair and appropriate awards were made.
2. The Claimants moved to execute.
3. On 30 September 2016, the Respondent moved Court seeking stay of execution pending appeal. On the same day, a new firm of advocates (Maina Muiruri & Co. Advocates) came on record for the Respondent. The Court allowed interim stay pending *inter partes* hearing.
4. On 27 October 2016, the application was dismissed for want of prosecution.
5. On 24 March 2017, the Respondent moved Court again seeking an order of stay of execution/ruling of dismissal and it offered to deposit the decretal sum in Court.
6. The Court granted stay of execution on condition the decretal sum was deposited into Court within 28 days.
7. On 26 June 2017, before the hearing of the application, the firm of *Maari Nyaberi & Associates* applied to be allowed to cease acting for the Respondent. Why the application was filed is baffling for the said firm had on 4 October 2016 executed a consent allowing the firm of *Maina Muiruri & Co. Advocates* to come on record (application to cease from acting was allowed on 18 September 2017).

8. When the application of 24 March 2017 came up for hearing on 17 July 2017, the Court allowed the execution process to proceed and in this respect the Court notes that there is nothing on record to show that the Respondent had complied with the order to deposit the decretal sums into Court.
9. On 31 August 2017, the Claimants applied to Court for an order to secure police assistance to execute. The application was allowed 29 September 2017.
10. The Respondent yet again moved the Court on 22 June 2018 through *Ng'ang'a & Mugwe Advocates* seeking orders
 1. ...
 2. **THAT** the attachment and sale of the Applicants goods should be STAYED pending the hearing and determination of this application.
 3. **THAT** the Applicant be allowed to file his Memorandum of Appeal out of time.
 4. **THAT** this application be served upon the Respondents.
 5. **THAT** the Applicant's right to a fair trial will be prejudiced if it is not allowed to proceed with its Appeal.
 6. **THAT** the Applicant has a valid Appeal under the law.
11. The said firm filed a *Notice of Change of Advocates* at the same time as the application.
12. The Court has considered the application and looked at the record keenly.
13. Proposed order 4, 5 and 6 do not require the Court's examination as the Duty Court directed on 25 June 2018 that the application be served. Proposed orders 5 and 6 are merely grounds upon which the Respondent relied on albeit indicated as prayers sought.
14. Consequently, the relief meriting the Court's attention are proposed orders 2 and 3.
15. Proposed order 2 was casually drafted in that it sought a transient or *ex parte order* pending an *inter partes* hearing. Once the order was not granted at the *ex parte* stage, it became spent.
16. Technically it is incompetent.
17. However, on the merits, the Court notes from the record that the purpose and/or objective of the *stay* has not been disclosed. It is open to speculation whether the stay sought is stay of execution pending appeal or stay of execution pending setting aside or review.
18. On 30 September 2016, the Respondent moved the Court seeking orders restraining execution pending hearing and determination of an Intended Appeal. The application was filed by a new firm of advocates.
- 19 The Court granted interim stay on 5 October 2016 pending *inter partes* hearing on 27 October 2016.
20. The application was dismissed because the Respondent failed to appear to prosecute it.
21. On 24 March 2017 the Respondent again sought for orders including injunctive orders restraining the attachment of its properties in execution and an interim order of stay of execution was granted for 28 days to enable it deposit the decretal sums into Court awaiting an *inter partes* hearing of the application.
22. The Respondent did not comply with the condition and when the parties appeared in Court on 17 July

2017, the Court allowed the execution to proceed.

23. In the view of the Court, and the Court so finds, the Respondent is intent in not only delaying the Claimants from executing after successful litigation but also abusing the Court process.

24. The Court concludes so because the Respondent has made 2 previous attempts to stay the execution. It could as well be that the Respondent wants to take advantage of different judicial officers to achieve what it had failed to achieve in those previous attempts.

25. Further, the Respondent has also not explained why it did not comply with the condition upon which stay was granted earlier on or why it has failed to file a Notice of Appeal more than 2 years after judgment. That delay is inordinate.

26. It is also not lost on the Court that the advocates now on record did not secure leave and/or attempt to explain why it did not secure leave to come on record for the Respondent as contemplated by the applicable rules on change of advocate after judgment.

27. The application is dismissed with costs to the Claimants.

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

Radido Stephen

Judge

Appearances

For Claimants	Kulecho & Co. Advocates
For Respondent	Mr. Ng'ang'a instructed by Ng'ang'a & Mugwe Advocates
Court Assistant	Lindsey