



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 293 OF 2015

(Before Hon. Justice Mathews N. Nduma)

PAMELA NELIMA LUTTA.....CLAIMANT

VERSUS

MUMIAS SUGAR CO. LTDRESPONDENT

RULING

1. The Notice of Motion application dated 8th February, 2018 and filed on even date seeks among others a temporary injunction restraining the Respondent from executing the Judgment of court delivered by Maureen Onyango – J on 22nd September, 2017.
2. The application is grounded on reasons set out on the face of the application to wit that the Applicant intends to appeal the judgment and had filed a notice of appeal against the judgment.
3. That the judgment awarded a colossal sum of Kshs.13,416,327 and the Appeal shall be rendered nugatory if the Appellant is eventually successful and the Respondent is unable to refund the decretal sum.
4. That the Appeal is arguable and has high chances of success.
5. The application is further supported by affidavit of Nashon Areka the Chief Executive Officer of the Respondent.

Reply

6. The application is opposed by a replying affidavit of the claimant filed on 16th February, 2018.
7. The Respondent states that there is no competent or valid intended appeal since judgment was delivered on 22nd September, 2017 and a notice of appeal had to be filed and served within 14 days in accordance with Court of Appeal Rules.
8. That FKE lodged a notice of appeal on 24th November, 2017 and served on the advocates of the applicant on 27th November, 2017 66 days after the judgment of the court.
9. That no application was filed to enlarge time within which to file notice of appeal out of time.
10. Furthermore, FKE were not on record in the matter and were strangers to the suit. To date the law firm of Okweh Achiando & Co. Advocates is on record for the Applicant.
11. This application is therefore dead on arrival and the application for stay of execution unsustainable.
12. That the Applicant has been indolent, has not demonstrated further actions to ensure the record of appeal is prepared and the appeal is processed for hearing.
13. The Respondent prays that the application be dismissed with costs.

Determination

14. The issues for determination are as follows:-

(i) Whether there is an appeal lawfully filed by the applicant.

(ii) Whether the application for stay ought to be granted.

Issue i

15. The impugned judgment was delivered on 22nd September, 2017 and a notice of appeal was filed on 6th October, 2017. The supporting documents clearly demonstrate this fact. It is therefore not correct, as is alleged by the Respondent that the notice of appeal was filed on 24th November, 2017.

16. The appeal was clearly filed within 14 days of judgment. Whether or not the noted appeal is valid is a matter for determination by the court of appeal. This court is functus officio upon delivery of the judgment. The matter as to whether FKE is validly on record before the court of appeal is a matter for determination by that court.

17. The court has considered the Draft Memorandum of Appeal attached to the application and raises valid arguable issues of law and fact.

18. Furthermore, the judgment awarded the Claimant a huge sum of money and the appeal is likely to be rendered nugatory if the application for stay of execution is not granted.

19. The appellant is a public corporation, and it is fair and just to allow the corporation to ventilate the appeal before the large sum is released to the Respondent if at all.

20. The application was brought five (5) months upon delivery of judgment and subsequent to the extraction of the decree of the court by the advocates for the Respondent on 22nd January, 2017. The Auctioneer, had already issued proclamation of attachment of movable goods in execution of the decree with a draft bill of costs by the auctioneers in the sum of Kshs.3,102,312.90.

Issue ii

21. Should the stay of execution be granted in respect of the entire decretal sum?

22. The court has well analysed the judgment of the court vis a vis the draft grounds of appeal filed by the Respondent and has arrived at the conclusion that there is no arguable appeal vis a vis the award in respect of –

(i) 674,877 in respect of salary for days worked.

(ii) Kshs.1,310,762 in respect of leave days not taken and

(iii) Kshs.1,557,410 in respect of payment of two months salary in lieu of leave.

23. The court therefore directs that these amounts be released forthwith to the Claimant.

24. Stay of execution is granted in respect of Kshs.9,344,460 awarded in compensation for unfair dismissal and any taxed bill of cost. This is the issue in real contention in the pending Appeal.

25. In the final analysis, the court directs the Respondent to release a sum of Kshs.3,543,049 to the Respondent/Claimant within 30 days, failing which the stay of execution granted in respect of Kshs.9,344,460 and any taxed bill of cost will lapse and execution to issue.

Ruling Dated, Signed and delivered this 17th day of July, 2018

MATHEWS N. NDUMA

JUDGE