



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 21 OF 2014

(Before Hon. Justice Mathews N. Nduma)

SAMUEL OGONJI & 31 OTHERSCLAIMANTS

VERSUS

KISUMU COUNTY GOVERNMENT.....1ST RESPONDENT

KISUMU COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. Applicant, in the application dated 3rd November, 2017 seeks extension of time to file a Notice of Appeal. The matter is guided by section 7 of the Appellate jurisdiction Act, Cap 9 Laws of Kenya. The Act is to be construed to apply to the courts of equal status and reads as follows:-

“The High Court may extend time for giving notice of intention to appeal from a Judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.”

2. The guidelines to be followed in an application of this nature were set out by the Supreme court in the case of **Nicholas Kiptoo Arap Korir Salat Vs IEBC & 7 others SC Application No. 16 of 2014** as follows:-

- (a) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- (b) The party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- (c) As to whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis.
- (d) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
- (e) Whether there will be any prejudice to be suffered by the Respondents if the extension is granted.
- (f) The application should have been brought without undue delay; and
- (g) In certain cases, like election petitions, public interest should be considered for extending time.

3. The Application was brought one day upon expiry of 14 days. The delay was not inordinate. No substantial prejudice would be suffered by the Respondent that cannot be remedied by way of costs. The grant of the application is discretionary. The Court deems it fit to grant the application.

4. With regard to the issue of stay of execution pending the hearing and determination of the intended Appeal, the court notes that Order 42 Rule 6(1) of the Civil Procedure Rules provides that no appeal or second appeal shall operate as a stay of execution. The Court has a discretion to grant stay. The considerations include that the application is brought without undue delay, the court is satisfied that substantial loss would be occasioned the applicant if the application is not granted, the applicant to provide such security as the court deems fit and that the intended appeal is arguable.

5. The judgment delivered on 19th October, 2017 is for payment of arrear salary for the Claimants for September 2016 to October 2017 to be tabulated by the County Labour Officer Kisumu.

6. The Respondents were directed to immediately issue to the Claimants letters of appointment absorbing them into regular terms of employment with effect from 1st November, 2017.

7. The Respondents were to pay costs of the suit. The Respondents have failed to comply with the terms of the judgment regarding employees who are still in their employ. In the court's view, the Respondents resorted to self-help without obtaining orders from this court.

8. This court refuses to exercise its discretion in favour of a party who already has dirty hands.

9. The court is not satisfied that the Respondents will suffer irreparable loss by formalizing employment of employees who are still working for them in compliance with section 37 of the Employment Act, 2007.

10. Accordingly, the application for stay of execution is refused.

11. The final orders of the court are as follows:-

(a) Leave to file notice of appeal out of time is granted. Same be filed within 7 days of this Ruling.

(b) Application for stay of execution pending appeal is refused.

Dated and Signed in Kisumu this 5th day of July, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Mwamu for Claimant

Mr. Opondo for 1st Respondent

Chrispo – Court Clerk