

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CASE NO. 847 OF 2011

PETER NGAU NZIOKA.....CLAIMANT /RESPONDENT

VERSUS

MUTHAIGA GOLF CLUB.....RESPONDENT/APPLICANT

RULING

1. The Notice of Motion application before me seeks the stay of proceedings pending the hearing and determination of the appeal that has been preferred against the decision of the court given on 6th April 2018. The Respondent/Applicant has attached the memorandum of appeal in Civil Appeal No. 229 of 2018 at Nairobi between it and the Claimant/Respondent. The Respondent/Applicant has offered security for costs for the stay sought. The motion though served on 26th July 2018 was not opposed and Miss Mubangi while urging the motion submitted that relying on the grounds advanced on the face of the motion and the affidavit in support of the motion sworn by the finance manager of the Respondent/Applicant Mr. David Muunga, there was basis to grant the orders sought.

2. The parameters of grant of stay pending appeal are well set out in precedent. I need not rehash them here. The Court's discretion to order a stay of execution of its order or decree is fettered by three conditions. Firstly the applicant must establish a sufficient cause, secondly the court must be satisfied that substantial loss would ensue from a refusal to grant stay and thirdly the applicant must furnish security. It need not be stated that the application must, of course, be made without unreasonable delay.

3. The Respondent/Applicant has made the application seeking stay in relatively short shrift. The decision appealed against was given in April 2018 and there is an appeal preferred as Civil Appeal No. 229 of 2018. There is offer of security and the appeal raises 7 grounds. These grounds from a reading of them reveal that there is an arguable appeal as can be gleaned from grounds 2, 3, 4, 5 and 6. An arguable appeal need not be an appeal that must succeed. Indeed, the appeal may well fail, as do some of the appeals preferred but that is for the Appellate Court to determine.

4. The order that commends itself for me to make is one allowing the motion seeking stay on the condition that the Respondent/Applicant will furnish within 30 days of the Ruling, a suitable bank guarantee of Kshs. 500,000/- as security for costs. Should the Respondent/Applicant fail to provide the said bank guarantee the stay granted today will automatically lapse.

It is so ordered.

Dated and delivered at Nairobi this 19th day of October 2018

Nzioki wa Makau

JUDGE