



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 179 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 15th October, 2018)

LYNETTE PEREIRA.....CLAIMANT

VERSUS

KENYA MOTOR SPORTSFEDERATION LIMITED.....RESPONDENT

RULING

1. The Application before Court is the Notice of Motion Application dated 18/6/2018 and filed by the Respondent/Applicants herein seeking stay of execution of Nairobi ELRC No. 179/2013 pending hearing and determination of the appeal filed by the Applicants against the Judgment of this Court delivered on 23.2.2017.
2. The Respondent/Applicants aver that they are dissatisfied with this Court's judgement and have already preferred an appeal at the Court of Appeal.
3. The Applicants also submitted that they are willing to abide by any conditions and terms as to security as the Court may deem fit to impose.
4. The Claimants/Respondents filed their Replying Affidavit to this Application on 12/7/2018. They aver that there has been inordinate delay in filing this application which they submit is an afterthought.
5. They also submit that the Respondent's contention that they have filed a Memorandum of Appeal is not true as they have never been served with a Notice of Appeal and the annexed Memorandum of Appeal is addressed to the ELC Court at Thika.
6. I have examined all the averments of the Parties. Order 42 rule 6 of the Civil Procedure Rules provide as follows:-

1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

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”.

7. Thus, the guiding considerations on whether to grant or not to grant stay order are as set above.

8. I note that the judgment in this case was delivered on 23/12/2017. The Applicants filed this Application on 18/6/2018. This indeed is an inordinately long time and the Respondents/Applicants are guilty of delay.

9. Secondly, the Applicants contend that they filed an Appeal and they annexed a document Appendix No. MN3. This definitely cannot be an appeal of this Court's judgement because it is filed at ELC Court in Thika and bear no appeal number and is also not filed. There is therefore no appeal filed and the period for appeal has since lapsed.

10. I am unable to grant any stay pending an imaginable non-existent appeal. In the circumstance, the orders sought cannot be granted and the appeal is therefore dismissed accordingly.

11. Costs to the Claimant/Respondent.

Dated and delivered in open Court this 15th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties