



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 153 OF 2016

(Before D. K. N. Marete)

BERNARD CHEMNJOR.....CLAIMANT

VERSUS

AL NAGEL HOLDING LTDRESPONDENT

RULING

This is an application by the claimant/application dated 5th April, 2018. It seeks the following orders of court;

1. THAT the instant Application be certified urgent and service of the same be dispensed with in the first instance.
2. THAT the Decretal Sum of Kshs.1,684,000.000 deposited as security at Industrial Court Revenue Account at Kenya Commercial Bank in Account No.1144918693 pursuant to court order given on 7th March, 2018, be released to the Claimant's Advocates, M/s Tombe & Company Advocates.
3. THAT the Costs of this Application be provided for.

It is grounded as follows;

- a. THAT the Claimant succeeded in his Claim and therefore, there is no reason at all for the Decretal Sum of Kshs.1,684,000.00 deposited in court to be held any further in the account as there is no pending Application to be determined by the Honourable Court.

The respondent in a Replying Affidavit sworn on 3rd July, 2018 opposes the application *in toto*.

She grounds her opposition as follows;

- That the application is not candid on material facts.
- That the application was not served on them until 21st June, 2018, when it came in accompanied by a hearing notice on 20th June, 2018.
- That the respondent's application dated 3rd March, was withdrawn owing to technicalities but was resumed in the same strength.
- That this application is still pending and should take priority over the instant application.
- That the delay in effecting the deposit of decretal sum is explicable.
- That the claimant is jobless and would not be in a position to refund the decretal sum should this judgement of court be set aside or overturned.
- That the claimant is unlikely to suffer prejudice if this application is not upheld.

The application came to court variously until 9th July, 2018, when it was heard in the absence of the respondent.

I choose to allow this application. This is because judgement on this matter was made on 22nd May, 2017. One year plus down the line the respondent has not made any efforts to satiate her part of the bargain – execution and payment of the decretal sum, all inclusive. Instead, he has involved in circumlocution by way of endless applications before court. He does not seem to appreciate defeat. It is trite practice and

process that litigation must at one time come to an end. This is more so in the circumstances of this case.

I am therefore inclined to allow this application on the following orders;

1. That the Decretal Sum of Kshs.1,684,000.000 deposited as security at Industrial Court Revenue Account at Kenya Commercial Bank in Account No.1144918693 pursuant to court order given on 7th March, 2018, be released to the Claimant's Advocates, M/s Tombe & Company Advocates.

2. That the costs of this application shall be borne by the respondent.

Delivered, dated and signed this 9th day of October, 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Tombe instructed by Tombe & Company Advocates for the claimant.

2. No appearance for the respondent.