



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 334 OF 2013

(Before Hon. Justice Mathews N. Nduma)

BEATRICE OMITI.....CLAIMANT

VERSUS

KENYA COMMERCIAL BANK LIMITED.....RESPONDENT

R U L I N G

1. The substantive suit was heard and determined in a judgment delivered on 22nd September, 2017, in which the court awarded the Applicant maximum compensation of 12 months gross salary in the sum of Kshs.1,518,276 and allowed the Respondent Bank to apply the decretal sum to offset the debt owed to it by the applicant.
2. The decretal amount in the aforesaid judgment was not sufficient to settle the debt owed to the Respondent.
3. The Loan has fallen in arrears and the Respondent has moved to distress, repossess and realize the security under property No. E/Bukusu/S. Kanduyi/2363 registered in the name of the applicant Beatrice Eshirama Omiti.
4. The Application for stay is sought pending hearing and determination of Intended appeals (emphasis mine). There is no Notice of Appeal attached to the Notice of Motion filed on 26th February, 2018.
5. The Applicant states that both parties are dissatisfied with the judgment of the court and intend to appeal.
6. The Respondent filed a Notice of Appeal dated 29th September, 2017 but has not obtained a stay of execution pending Appeal.
7. The Claimant/Applicant has not attached a Notice of Appeal to the application.
8. The court has carefully considered the facts of the case deposed in the Notice of Motion and supporting affidavit and in the replying affidavit of the Respondent filed on 4th July, 2018 and grounds of opposition dated 2nd May, 2018 and has come to the following conclusions of fact –
 - i. The Respondent has not disclosed whether or not it has applied the decretal amount of Kshs.1,518,276 to pay the loan and if it did so, what is the balance of the amount due and how monthly instalments ought to be paid upon taking into account, the lumpsum decretal sum of Kshs.1,518,276. The court notes that the initial loan was Kshs.2,130,000.
 - ii. Provided the Respondent has failed to apply the decretal sum to the staff loan and advised the Claimant/Applicant on the outstanding balance and how it ought to be disposed of, the court is still seized of the matter until its judgment is fully complied with and/or a stay of execution is obtained pending the intended appeal by the Respondent and cross appeal by the Applicant.
 - iii. Until the full decretal sum has been applied and communication is made to the Applicant, the injunction issued by the court during the pendency of the suit for the loan to be paid on the favourable staff interest rate apply to the staff loan.
 - iv. Whereas the Applicant is obliged to repay the loan at staff rates including the application of the decretal sum, those favourable terms cease to apply once the suit has been determined and the judgment sum fully applied.
 - v. Provided the Respondent has not applied the Judgment sum on the loan, and has not obtained an injunction from the court pending the hearing and determination of the appeal, it lacks any bonafides to move and realize the security against the Applicant.

9. To that extent,

- a. The Respondent is restrained from distressing, repossessing and or realizing the security under property No.E/Bukusu/S. Kanduyi/2363 registered in the name of Beatrice Eshirama Omiti.
- b. The injunction is to remain in place, until the Respondent bank has fully complied with the terms of the Judgment by Maureen Onyango J. delivered on 22nd September, 2017 and communicated to the Claimant/Applicant the balance and the terms of the loan repayment upon application of the full decretal sum.
- c. For purposes of the repayment, time starts to run for the purpose of repayment on new terms from the date of the application of the Judgment sum on the loan and upon proper communication to the Claimant/Applicant.
- d. The Respondent to pay costs of the application.

Ruling Dated, Signed and delivered this 4th day of October, 2018

Mathews N. Nduma

Judge

Appearances

M/s. Namatsi for Claimant /Applicant

Mr. Owiti for Respondent

Chrispo – Court Clerk