



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1443 OF 2015**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 23<sup>rd</sup> February, 2017)**

**CATHIE AKINYI SILINGA ..... CLAIMANT/RESPONDENT**

**VERSUS**

**CHANDARANA SUPERMARKETS LIMITED..... RESPONDENT/APPLICANT**

**RULING**

1. The application before Court is a Notice of Motion dated 7.10.2016 brought under Rule 32(2) of Industrial Court (Procedure) Rules 2010, Order 22 Rule 22 and Order 51 Rule 1 and 3 of the Civil Procedure Rules 2010 and Section 3A and 63 (e) of the Civil Procedure Act.

2. They seek the following orders:

*1. That this application be certified urgent, be heard ex-parte and service of the same be dispensed with in the first instance.*

*2. That there be a stay of execution of the ruling delivered on 7<sup>th</sup> September 2016 and any consequent decree thereon pending the hearing and determination of the application herein.*

*3. That there be a stay of execution of the ruling delivered on 7<sup>th</sup> September 2016 and any consequent decree thereon pending the hearing and determination of the intended appeal of the Court of Appeal.*

*4. That costs of this application be in the intended appeal.*

3. The application is based on the following grounds:

*i. That the Respondent/Applicant has lodged a Notice of Appeal against the whole decision of Honourable Lady Justice Hellen Wasilwa which ruling was delivered on 7<sup>th</sup> September, 2016.*

*ii. That the Respondent/Applicant has formally requested the Deputy Registrar for typed proceedings and certified copy of the order/decrees for the purposes of filing the intended appeal.*

*iii. That intended appeal raises serious questions of law and fact for the Appellate Court's consideration and determination.*

*iv. That as per the ruling delivered on 7<sup>th</sup> September, 2016 the Claimant was awarded damages for sexual harassment for Kshs.1,000,000/= and the Claimant is at liberty to execute for the stated sum thus there is imminent danger of execution against the Respondent.*

*v. That execution may render the appeal nugatory as it will have been overtaken by events.*

*vi. The Applicant is apprehensive that unless the execution process is stayed the Claimant might execute the order/decreed and the Applicant stands to suffer substantial loss as it may not be able to recover the decretal amount from the Claimant on a successful appeal.*

*vii. That the Applicant is ready, able and willing to provide security for due performance of the order/decreed in the form of an appropriate bank guarantee for the due performance of the order/decreed.*

*viii. That it is in the interest of fairness and justice that the application herewith be heard as a matter of urgency.*

4. The application is also supported by the annexed affidavit of Jane Mwangi the HRM of the Respondent herein. The gist of the application is that this Court awarded damages of 1 million for sexual harassment in a ruling delivered on 7.9.2016. That they are aggrieved by this decision and intend to file an appeal and have lodged an appeal. The application is therefore basically for stay pending appeal.

5. The Claimant Respondent opposed this application and they filed their grounds of opposition on 26.10.2016.

6. Their claim is that Notice of Appeal was lodged out of time contrary to mandatory 14 days period prescribed by Rule 75(2) of the Court of Appeal Rules. The Notice of Appeal was also not served upon them.

7. In order to grant stay order, this Court is guided by the provisions of Order 42 Rule 6(2) which state as follows:

**“(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.**

8. The Respondents filed this application on 7.10.2016 a month after the ruling of the Court. This means there was no substantial delay since they have shown that they have filed an appeal, it would be the duty of this Court to preserve the outcome of the appeal so that the appeal is not rendered useless.

9. I will however grant this stay on condition that ½ the decretal sum is released to the Claimant and the other half be deposited in an interest earning account held in the names of the Counsel for the parties within 30 days. In default execution to issue.

Read in open Court this 23<sup>rd</sup> day of February, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Gomba for Respondent – Present

Makori for Applicant – Present