



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 68 OF 2015**

(Before Hon. Lady Justice Hellen S. Wasilwa on 22<sup>nd</sup> February 2017)

**BARRACK OTIENO OMBIMA.....CLAIMANT/RESPONDENT**

*VERSUS*

**MR. FAROUK.....1<sup>ST</sup> RESPONDENT**

**IBRAHIM MOHMOUD.....2<sup>ND</sup> RESPONDENT**

**EAST WEST AFRICA LIMITED.....3<sup>RD</sup> RESPONDENT/APPLICANT**

**RULING**

1. The Application before Court is one dated 28.11.2016 which application is brought under Order 42 Rule 6 of Civil Procedure Rules 2010 and Section 1(A) and 3(B) of the Civil Procedure Act Cap 21 Laws of Kenya and all enabling provisions of the law seeking orders that:

- 1. This application be certified as urgent and heard ex-parte in the first instance.***
- 2. This Honourable Court be pleased to stay execution of the judgement and decree of the Honourable Lady Justice Hellen Wasilwa delivered on 14<sup>th</sup> day of November 2016, pending the hearing and determination of this application.***
- 3. This Honourable Court be pleased to stay execution of the judgement and decree of the Honourable Lady Justice Hellen Wasilwa delivered on 14<sup>th</sup> day of November 2016, pending the hearing and determination of the intended Appeal.***
- 4. The Costs of this application be provided for.***

2. The Application is supported by the annexed affidavit of Ibrahim Mahmoud and is founded on the following grounds:

- 1. That the Respondent/Applicant being dissatisfied with the judgement delivered on 14.11.2016 by Hon. Lady Justice Hellen Wasilwa intend to appeal in the Court of Appeal against the whole of that Judgement and the notice of appeal has been filed and lodged.***

- 2. That the Respondent/Applicant has an arguable appeal with high prospects of success.*
- 3. That the intended Appeal raises arguable issues of law and would be rendered nugatory if the stay orders are not granted.*
- 4. That the Applicant will suffer great prejudice if the judgement is enforced and the chances of recovery of any damages from the Claimant/Respondent are uncertain.*
- 5. That the Applicant is willing to deposit half of the decretal sum in Court as security and comply with whatever conditions the Honourable Court shall deem fit to grant.*
- 6. That the application has been made within reasonable time in the circumstances and in very good faith.*
- 7. That it is in the interest of justice that there be a stay of execution pending the hearing of the application and the intended appeal.*

3. The gist of the application is that the Applicants are dissatisfied with the judgement of this Court dated 14.11.2016 and intends to appeal hence the application for stay of execution.

4. In his reply to this application, Respondent was not opposed to the application save that the decretal sum should be deposited in Court.

5. Order 42 Rule 6 of the Civil Procedure Rules proves as follows:

**“6.(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.**

**(3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.**

**(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.**

**(5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.**

**(6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.**

6. In the case of the Applicant, the Applicants came to Court within a reasonable period. They have also stated that they intend to file an appeal which would be rendered nugatory unless orders of stay are granted.

7. Since the Respondent has conceded to stay on the condition of a security, I will find that granting the orders of stay sought will preserve the substratum of the appeal and so that the rights of the Respondent are preserved, I also direct the the stay is granted on condition that the decretal sum is deposited in an interest earning account held in the joint names of the Respondent/Claimant and the Counsel on record for the Applicants within 30 days. In default execution to issue.

Read in open Court this 22<sup>nd</sup> day of February, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Sang holding brief for Ayieko for Respondent – Present

Applicant – Present