



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

**AT NAIROBI**

**CAUSE NO. 273 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 21<sup>st</sup> February, 2017)**

**LEONARD GETHOI KAMWETI.....CLAIMANT/ RESPONDENT**

**VERSUS**

**NATIONAL BANK OF KENYA LIMITED.....RESPONDENT/ APPLICANT**

**RULING**

1. Before the Court is a Notice of Motion Application dated 25<sup>th</sup> October 2016, where the Applicant may be heard on an application for orders that:

- 1. The Application be certified as urgent and heard ex parte in the first instance.*
- 2. There be a stay of execution of the judgment entered on the 12<sup>th</sup> of October 2016 pending the hearing and determination of Applicant's intended Appeal.*
- 3. That there be a stay of execution of the judgment entered on the 12<sup>th</sup> of October 2016, pending the hearing and determination of Applicant's intended Appeal.*
- 4. The Court be pleased to grant the orders sought subject to any conditions as the Court may deem fit.*
- 5. That the costs of this application be provided for.*

2. The Application is supported by the grounds set out in the Application as well as the Affidavit of Habil A. Waswani;

- 1. That the judgment delivered on the 12<sup>th</sup> of October 2016 in the Respondent's favour where the Respondent was awarded Kshs 8,050,728.00 less statutory deductions together with the costs of the suit interest.*
- 2. That the Applicant is aggrieved with whole of the judgment delivered by Honourable Lady Justice Wasilwa therein and has initiated an Appeal against the said judgment.*
- 3. There are currently no orders of stay execution in force thereof, the Applicant is reasonably apprehensive that the Respondent through his agent shall proceed and execute against the*

***Applicant and render the Applicant's intended Appeal nugatory.***

***4. That unless the Respondent is restrained by an order of stay of execution, he shall proceed and execute against the Applicant and render the Applicant's intended Appeal nugatory.***

3. The Respondents have filed Grounds of Opposition dated 4<sup>th</sup> November 2016 where they oppose the Application for stay;

***1. They state that the Applicant is asking for a discretionary equitable remedy for the third time thus not coming to the Honourable Court with clean hands.***

***2. That the Respondent/Applicants third prayer of consequential stay of execution is vexatious, a clear abuse of process, and an unreasonable oppressive effort to deny the claimant the fruits of his judgment.***

***3. The Claimant/Respondent has filed an appeal in the court of Appeal namely Civil Appeal no 240 of 2016, filed on 31<sup>st</sup> October 2016. It has high chances of success and it seeks additional damages namely:***

***a. Punitive damages from the employer for clear reasons of engaging in corruption, rent seeking and nepotism as the sole reason for terminating the employees services which was pleaded, demonstrated and comprehensively submitted upon but not addresses in the judgment of 12<sup>th</sup> October 2016.***

***b. Damages for malicious prosecution by the Respondent/Applicant for 37 months at the institute of certified public servants Kenya ICPSK, starting on 18<sup>th</sup> October 2013 and dismissed by CPSK on the 1<sup>st</sup> of September 2016 which were pleaded, demonstrated and comprehensively submitted but not addressed in the judgment of 12<sup>th</sup> October 2016.***

***c. Differential in payment in the sum of Kshs 3,019,023 arising from discrimination and which the Employer agreed in their final written submissions they had engaged in. This differential in payments was pleaded, demonstrated and comprehensively submitted upon dismissed as unproven in the judgment 12<sup>th</sup> October 2016.***

***4. As the Respondent/Applicant has not filed an Appeal they are unable to demonstrate how if it all they have an arguable point that will be rendered nugatory in the manner envisaged by Order 42 Rule 6 (2) of the Civil Procedure Regulations if stay orders are not granted.***

***5. The Respondent has not demonstrated what grounds will be raised in appeal since the parties were fully heard before determination was made.***

***6. The award is a money award and is not unique, exceptional and exclusive subject matter that is worthy of being sentimentally preserved in specie.***

***7. The Respondent/Applicant is adequately secured by two securities worth Kshs 180 million namely:***

***a. Nairobi Block 137/87 worth Kshs 25 million and held by illegal force by the Respondent /Applicant as well as***

***b. LR 209/10698 Nairobi worth Kshs 150 million held by registered mortgage by the Respondent/Applicant.***

4. The Application was disposed of by way of submission by the Court.

5. The Applicants submit that they fully rely on their pleadings and the affidavit sworn by Habil A. Waswani. They submit that the Claimant had already been paid a sum of Kshs 16,895,698.00 excluding the Claimant's retirement benefits and additional benefits which he freely accepted and signed off at the time of separation hence he will not suffer any injustice or inconvenience if the stay orders are given.

6. They submit that they are ready to comply with any orders given in terms of security as may be determined from the Court.

7. They urge the Court to grant the orders.

8. The Respondents submitted that they fully rely on their grounds of opposition as well as the Affidavit of Leonard Gethoi Kamweti.

9. They submit that no arguable points were demonstrated on the 12<sup>th</sup> of October when the interim stay orders were granted and the subject matter is not unique, sentimental, and whose loss will cause irreversible substantial harm to the Applicant/Respondent if orders for stay are not given.

10. They submit that the Applicant has no chance of succeeding as parties were fully heard before the judgment was made. They submit that the applicant is unlawfully holding the Claimant's assets including Nairobi Block 137/87 which was charged to them in March of 2008 at a sum of 5.5 million but is now worth 24 million. Its title is being held by the bank despite efforts to have it released. The Applicant is also holding another asset L.R 209/10698 Nairobi which was charged in March 2009 with a then secured loan of Kshs 15.5 million and is now worth 130 million.

11. He asks that the application be denied.

12. Having heard both parties, I note that Order 42 Rule 6(2) of the Civil Procedure Regulations provide conditions under which a stay order could be granted. It must be established that:

**“(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.**

13. This is a monetary claim and in line with the submissions of the Respondents, the Applicants are holding his securities in excess of the decretal sum.

14. It therefore follows that the Applicants do not stand to lose anything substantial and even if the Appeal is allowed, the Respondents securities are able to meet the decretal sum awarded. There is therefore no reason as per the law why the stay should be allowed. I dismiss the application for stay and order that execution proceeds.

Read in open Court this 21<sup>st</sup> day of February, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Miss Ouma holding brief Wena Applicant

Respondent in person present