



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 305 OF 2015

BETWEEN

1. JOHN MUTISYA
2. SAID MOHAMED GOWE
3. BUDZO NASORO MBWAGIZO.....CLAIMANTS

VERSUS

RAPID KATE SERVICES LIMITED.....RESPONDENT

RULING

1. Judgment was delivered in favour of the 3 Claimants, for the sum of Kshs. 1,944,000, on the 9th December 2016.
2. The Respondent lodged a Notice of Appeal dated 18th January 2017, and filed an Application dated 24th January 2017 for stay of execution pending Appeal at the Court of Appeal.
3. The Application is supported by the Affidavit of Respondent's Director K.K. Velani, sworn on 24th January 2017.
4. Parties agreed to have the Application considered on the strength of Written Submissions, which were confirmed filed, on 27th February 2017.
5. The Respondent on the whole submits it has shown its Application has merit, having met the requirements of the law on grant of stay of execution. The Claimants were blue collar Workers, and invariably, men of straw incapable of refunding the sum awarded to the Respondent in event the Respondent is successful in its Appeal.
6. The Claimants submit the Respondent has not shown the Claimants lack means to refund the sum awarded if they lose the Appeal. No security has been offered by the Respondent to the Claimants. The Court should exercise its discretion judiciously and not relieve the Respondent, of the consequences of its own acts.

The Court Finds:-

7. The argument fronted by the Respondent would hold true in all cases of blue collar Workers who have been successful against their Employers at the Employment and Labour Relations Court. Such Workers are the majority of Grievants appearing before this Court. We entertain a large number of men of straw.

8. If stay of execution is granted simply because it is apprehended a Worker is a man of straw, and unable to meet the demands of a decision reversing his Judgment, the implication is that most prayers for stay of execution would be granted as a matter of course, because the consumers of industrial justice, are largely what would be known as men of straw. Such a trend would not fit well with the central architecture of this Court, which is to protect the weaker of the Parties, in the bargaining equation, and do so through an accelerated dispensation of industrial justice.

9. The initial design of this Court however has been altered, with indiscriminate principles from the civil jurisdiction, permeating how the Court should demarcate rights and obligations between disputing Employers and Employees.

10. The Court of Appeal has offered some useful guidance on the subject, such as where a Trade Union has represented its Members, obtained monetary decree, and stay of execution is declined with the explanation that the Union is not a man of straw, and would be able to meet the demands of a reversal of the initial Judgment, on behalf of its members. The problem persists in cases of blue collar Workers, unrepresented by Trade Unions.

11. The Court is of the view that as the Claimants' Advocate is an Officer of the Court, he can be entrusted the sums awarded, to hold in trust, until the intended Appeal is finalized. In event the Claimants lose the Appeal, Claimants' Advocate should be in a position to meet his professional obligation by refunding to his Counterpart. This way, the Claimants shall not feel their fruits of litigation have been placed too far from their grasp; or that this Court has given them with one hand and endorsed delay, or deprivation with the other hand; while the Respondent's right of Appeal is respected. It would be wrong for this Court to encourage the perception that Judgments made in favour of blue collar Workers, must invariably or unconditionally be stayed because these Workers are financially handicapped. Weighing the interest of the Parties, and having taken into account that Advocates are Officers of the Court, no different from the Judge, or the Registrar of the Court, imbued with the obligation to promote justice and effective operation of the judicial system; considering that the Respondent has not proposed any offer for security; and in exercise of its discretion, the Court ORDERS:-

a. Stay of execution of Judgment delivered on 9th December 2016 is granted on the following conditions-

i. The Respondent shall pay the entire sum awarded to the Claimants' Advocate within 3 working days of this Ruling.

ii. The Claimants' Advocate shall hold the sum awarded in his Client Account until the intended Appeal is heard or otherwise disposed of.

iii. In default of payment under paragraph [i] above execution to go on.

b) No order on the costs.

Dated and delivered at Mombasa this 24th day of March 2017.

James Rika

Judge