



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1317 OF 2011

PETER MWANZIA KASAU.....CLAIMANT

VERSUS

KOBO SAFARIS LIMITED.....RESPONDENT

Mr. Wawada for respondent/applicant

Nyamu for claimant/respondent

RULING

1. The application is for stay of execution pending appeal against judgment delivered on 19th January 2016.
2. The applicant states that the application was brought without undue delay after correction of an error on the face of the record of the judgment. The judgment sum is Kshs.1,098,570/=.
3. That the respondent is ready and willing to comply with the conditions which the court may impose including furnishing a bank guarantee or security or depositing the judgment sum in a bank account.
4. That the appeal shall be rendered nugatory if the stay is not granted as the claimant may be unable to refund the decretal sum.

Response

5. The application is opposed vide a replying affidavit filed on 5th December 2016. The respondent states that the respondent has not demonstrated whether the pending appeal has any chance of success to warrant the orders sought. The respondent further states that he is a man of means and should the appeal be successful he shall refund the judgment sum and so the appeal will not be rendered nugatory.
6. That nine months after filing notice of appeal, the applicant has not demonstrated by way of documents that it has taken any steps to prosecute the appeal.
7. That equity does not aid the indolent and the application be dismissed for the aforesaid reasons.

Determination

8. The onus of demonstrating that, the intended appeal is arguable or has probability of success, that the appeal will be rendered nugatory if the stay is not granted and that reasonable steps have been taken to prosecute the intended appeal is with the applicant.

9. The applicant did not make a single averment in the notice of motion and supporting affidavit that the appeal has any prospects of success. The applicant did not also respond to the positive averments by the respondent that he is a man of means and would refund the decretal sum if appeal was successful and also the applicant did not attach any documents to show efforts made to prosecute the appeal nine months after the judgment of court.

10. For these reasons, the application fails and is dismissed.

Dated and delivered at Nairobi this 28th Day of April 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE